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EAST INDIA (LEGISLATIVE COUNCILS).

REGULATIONS AND RULES

RELATING TO THE

CONSTITUTION OF A LEGISLATIVE COUNCIL FOR THE CENTRAL PROVINCES

AND OF

CERTAIN AMENDMENTS IN THE IMPERIAL COUNCIL REGULATIONS.

(9 ED. VII. CAP. 4.)

109134

Presented to both Houses of Parliament by Command of His Majesty.

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LIST OF ENCLOSURES.

1. Memorandum is explanation of the Regulations relating to the Central Provinces and Berar, and of the amendments to the Imperial Council Regulations.
2. Regulations and Schedules for the Central Provinces Legislative Council (including Berar.)
3. Proclamations issued on the 8th November 1913.
4. Amendments in the Regulations relating to the Legislative Council of the Governor General.
5. Rules (i) for the discussion of the annual Financial Statement,
   (ii) for the discussion of matters of general public interest, and
   (iii) for the asking of questions, in the Central Provinces Council.

No.

1914.

GOVERNMENT OF INDIA.

HOME DEPARTMENT.

PUBLIC.

No. 1, dated Delhi, the 5th March 1914.

[COPY.]

Letter to His Majesty's Secretary of State for India.

Subject.

Supply to the the India Office for presentation to Parliament of copies of the Regulations and Rules relating to the constitution of a Legislative Council for the Central Provinces and of certain amendments in the Imperial Council Regulations.

S. G. P. I. D.-K.—No. 951 H. D.—31-3-14.—1,500.—P. A. D.

No. 1 of 1914.

GOVERNMENT OF INDIA.

HOME DEPARTMENT.

PUBLIC.

To

THE MOST HONOURABLE THE MARQUESS OF CREWE, K.G.,
His Majesty's Secretary of State for India.

Delhi, the 5th March 1914.

MY LORD MARQUESS,

WE have the honour to submit for Your Lordship's information copies of the proclamations issued by us on the 8th November 1913, with His Majesty's approval, extending to the territories administered by the Chief Commissioner of the Central Provinces the provisions of the Indian Councils Acts, 1861 to 1909. We also annex copies of the Regulations for the constitution of a Legislative Council for the Chief Commissioner, which have recently received the approval of Your Lordship in Council, and of the rules relating to the discussion of the Annual Financial Statement, and of matters of general public interest, as also to the asking of questions, which have been framed with the sanction of the Governor General in Council under section 5 of the Indian Councils Act, 1909. Under section 7 of the latter Act these papers, with the exception of the proclamations and the regulations framed under the Indian (Foreign Jurisdiction) Order in Council, 1902, require to be presented to both Houses of Parliament. For the full understanding of the facts, the presentation of the complete papers may however be deemed to be expedient.

2. Section 3 of the Government of India Act, 1912 (2 and 3, Geo. V., Ch. 6), empowers the Governor General in Council to create a Legislative Council in the provinces administered by Chief Commissioners, and while a Council has already been established in Assam, the extension of the privilege to the Central Provinces has been delayed by the consideration of the peculiar constitutional position of Berar. Though under the administrative control of the Chief Commissioner, this area is not strictly part of British India and is therefore outside the territorial extent of any legislation under the Indian Councils Acts. It is accordingly only possible to legislate for it in virtue of the powers conferred on the Governor General in Council by the Indian (Foreign Jurisdiction) Order in Council, 1902. One way out of the difficulty would have been to exclude Berar altogether from the Council constituted in the Central Provinces, but the importance of Berar as part of the Chief Commissioner's charge and the peculiar circumstances attaching to its position rendered such a course open to objection; and as a final solution of the difficulty it has been decided, with Your Lordship's approval, to adopt the procedure of which details may be gathered from the Regulations and the explanatory memorandum of which copies are annexed. Briefly the intention is to establish a Council with powers to legislate for British districts, the laws thus enacted being so drawn that under our Foreign Jurisdiction powers they can by a further process be subsequently applied to Berar, either with or without modification. At the same time the Council for the Central Provinces will be so constituted as to admit of the nomination thereto of

residents in Berar. The Regulations and Rules for the Central Provinces follow closely, both in form and in substance, the revised Regulations for other Legislative Councils in India and those framed for the Council of the Chief Commissioner of Assam, which have already been presented to Parliament.

3. We also annex for Your Lordship's information and for presentation to Parliament copies of a further amendment which has been introduced in the Imperial Council Regulations, and which though unconnected with the constitution of a Legislative Council in the Central Provinces may conveniently be included on this occasion. Under the existing Regulations it is permissible for the same person to hold simultaneously a seat both on the Imperial and on a Provincial Legislative Council. Under modern conditions it is considered that either body gives sufficient work to absorb the available time which any member is likely to devote to these duties, and the cessation of the existing practice will increase the number of persons who have had experience of legislative work. We have, therefore, obtained Your Lordship's approval of the amendment of Regulation VIII, sub-section (1) so as to prohibit pluralism in the case of future elections.

We have the honour to be,

My Lord Marquess,

Your Lordship's most obedient, humble Servants,

HARDINGE OF PENSHURST.

R. W. CARLYLE.

HARCOURT BUTLER.

W. H. CLARK.

R. H. CRADDOCK.

W. S. MEYER.

Enclosure no. 1.

MEMORANDUM.

This memorandum is intended to explain briefly.—

I. The constitution of a Legislative Council for the Chief Commissioner of the Central Provinces.

II. The changes made in the Regulations relating to the Governor General's Council in order to preclude the same person from holding a seat both on the Inperial and on a Provincial Legislative Council.

2. *I.—Constitution of a Legislative Council for the Central Provinces.*— The main point requiring explanation in connection with the formation of a Legislative Council for the Chief Commissioner of the Central Provinces is the procedure adopted to surmount the difficulties due to the peculiar position of Berar, which forms part of the Chief Commissioner's charge. It has been necessary to devise a method which, while providing representation for Berar, would introduce in the character of the new council, as compared with the other Councils in India, no greater departure than is necessary to preserve the constitutional difference between Berar and the Central Provinces proper; and this result has been achieved by framing two Regulations, one for the Central Provinces and the other for Berar. The former, framed under the Indian Councils Act, 1909, follows closely, both in form and substance, the Revised Regulations for other Legislative Councils in Inda, including those for the Chief Commissioner of Assam. The only reference in these Regulations to the representation of Berar is a provision to the effect that of the maximum number of 17 members which the Chief Commissioner is empowered to nominate three shall be non-official persons resident in Berar duly qualified under regulations laid down in that behalf. The separate Regulations for the latter area made in exercise of the foreign jurisdiction of the Government of India provide for the election of these three persons, with a view to their being subsequently nominated as members of the Council by the Chief Commissioner of the Central Provinces. The advinistration of the elections held under the Berar Regulations is entrusted to the local administration of Berar (which is in effect, the Chief Commissioner), and that anthority will notify in the official gazette the names of all persons elected, or selected as the case may be, for nomination by the Chief Commissioner of the Central Provinces, who will thereupon nominate such persons under the Regulations framed under the Indian Councils Act. Save in these respects and in the fact that the first condition of eligibility under the Berar Regulations is not that of being a British subject, but of being a resident in Berar, the Berar Regulations differ in no material respect, either in form or substance, from those framed under the Indian Councils Act for the Central Provinces.

3. The interests which merit representation in the new Coucil are—

(*a*) Municipalities;
(*b*) District Councils (Central Provinces) and District Boards (Berar); and
(*c*) Landholders;

since there are at present no other interests or communities which are of sufficient importance to claim the privilege of a separate electorate. The province possesses no University or Chamber of Commerce, and the Muhammadan community is small and scattered. In the latter case, however, though a separate electorate has not been provided for, it is intended that its interests should be represented by the nomination of one of its leaders.

4. The Council will consist of not more than 25 members, excluding the Chief Commissioner. Of these—

(1) Seven members shall be elected by the following constituencies in the Central Provinces:—

(*a*) By the Municipal Committees . . .	3 members.
(*b*) By the District Councils	2 „
(*c*) By the Landholders	2 „

(2) Seventeen members shall be nominated by the Chief Commissioner with the sanction of the Governor General of whom—

(*a*) not more than ten may be officials, and

(*b*) three shall be non-official persons resident in Berar.

The Chief Commissioner may further, with the sanction of the Governor General, nominate one person, whether an official or non-official, having expert knowledge of any subject connected with proposed or pending legislation.

The three members from Berar will be nominated by the Chief Commissioner on election by the following constituencies in Berar :—

(*i*) By the Municipal Committees	1	member.
(*ii*) By the District Boards	1	„
(*iii*) By the Landholders	1	„

5. These arrangements show a preponderance of nominated members, of whom there are 15 in comparison with 10 elected,* but in view of the difficulty of securing any other electorates than those mentioned, it has not been possible to provide for elected seats on a more liberal basis. The whole institution of a Legislative Council in the Central Provinces is, moreover, a novelty. The number of elected seats for Berar has been fixed at three, having regard to the importance of this area, which in point of extent, population and revenue compares with the Central Provinces proper as follows :—

	Area in square miles.	Population.	Land revenue.
			₹
Central Provinces	82,093	10,861,550	1,02,34,539
Berar . .	17,710	3,056,087	86,42,955

6. The following features are deserving of notice :—

(*a*) In the case of the Municipalities and District Boards of the Central Provinces proper the right to nominate candidates for election is to be exercised in rotation; and provision is made for the special representation of the Nagpur and Jubbulpore Municipalities. These arrangements are designed to secure the fair representation of the different interests in the Province. Under the ordinary rule when electorates are composed of divisions or groups, the candidate and his nominators must be resident within the division or group which comprises the electorate, but in the present case the two groups in the Municipal and District Council electorates are divided into their component divisions for the purpose of *nomination*, and the candidates nominated must be residents of each division alternately, the actual selection from among nominated candidates being determined by the votes of the whole group. The same principle has been applied to the electorate consisting of the Nagpur and Jubbulpore Municipalities.

(*b*) In the case of Municipalities the franchise has been restricted to such committees as have an income of not less than ₹5,000. This restriction exists in the Municipal electorates of other Councils, with the exception of those in Madras and Assam, and is intended to prevent a few unimportant and backward bodies being given a disproportionate influence in the selection of representatives.

(*c*) In the Schedule relating to election by landholders of Berar, the term "landholders" has been defined as a person "holding land, therein in other than tenancy right." This negative definition, which has been adopted in view of the peculiar system of land tenure in Berar, secures the same condition as is enforced by the

* This number includes three members for Berar, since they will be chosen by the constituencies indicated although they will actually hold seats by nomination.

more precise definition in respect of the corresponding electorate of other Councils—namely, the limitation of the franchise to persons holding land in proprietary or occupancy right.

The other amendments do not call for special notice.

7. *II.—Changes made in the Regulations relating to the Governor General's Council in order to preclude the same person holding a seat both on the Imperial and on a Provincial Legislative Council.*—This step is the sequel to the enlargement of the membership and extension of the activities of Legislative Councils under the Indian Councils Act, 1909, especially as regards the consideration of the Budget. It is thought that the work afforded by a single Council under existing conditions is sufficient to absorb all the time a member is likely to devote to these duties, and that facilities should be granted for increasing the number of persons with experience of legislative work.

S. G. P. I., Delhi, no. 351 H. D.—31-3-14—1,500—P. A. B.

Enclosure No. 2.

REGULATIONS FOR THE NOMINATION AND ELECTION OF MEMBERS OF THE LEGISLATIVE COUNCIL OF THE CHIEF COMMISSIONER OF THE CENTRAL PROVINCES.

(Published in Notification No. 58 of the Government of India in the Legislative Department, dated the 15th November 1913).

Number of Members.

I. (1) The Members of the Legislative Council of the Chief Commissioner of the Central Provinces shall ordinarily consist of—

A.—Members elected by the classes specified in Regulation II, who shall be seven in number;

B.—Members nominated by the Chief Commissioner with the sanction of the Governor General, who shall not exceed seventeen in number, and of whom,

(*a*) not more than ten may be officials, and

(*b*) three shall be non-official persons resident in Berar duly qualified under Regulations laid down in that behalf.

(2) In addition to the twenty-four members above specified, the Chief Commissioner may, with the sanction of the Governor General, nominate one more person, whether an official or a non-official, who possesses expert knowledge of subjects connected with proposed or pending legislation to be a Member of the Council:

Provided that it shall not be lawful for the Chief Commissioner to nominate so many official persons under these Regulations that the majority of all the Members of the Council shall be officials.

II. The seven elected Members specified in Regulation I shall be elected as follows, namely :—

(i) By the Municipal Committees	...	...	...	3 Members.
(ii) By the District Councils	...	...	...	2 Members.
(iii) By the Landholders	...	...	...	2 Members.

Electorates and electoral procedure.

III. The election of the Members specified in Regulation II shall be effected by the electorates, and in accordance with the procedures respectively prescribed in the Schedules to these Regulations.

Ineligible candidates.

IV. No person shall be eligible for election as a Member of the Council, if such person—

(*a*) is not a British subject, or

(*b*) is an official, or

(*c*) is a female, or

(*d*) has been adjudged by a competent Court to be of unsound mind, or

(*e*) is under twenty-five years of age, or

(*f*) is an uncertificated bankrupt or an undischarged insolvent, or

(*g*) has been dismissed from the Government service, or

(*h*) has been sentenced by a Criminal Court to imprisonment for an offence punishable with imprisonment for a term exceeding six months, or to transportation, or has been ordered to find security for good behaviour under the Code of Criminal Procedure, such sentence or order not having subsequently been reversed or remitted, or the offender pardoned, or

(*i*) has been debarred from practising as a legal practitioner by order of any competent authority, or

(*k*) has been declared by the Chief Commissioner to be of such reputation and antecedents that his election would, in his opinion, be contrary to the public interests:

Provided that in cases (*g*), (*h*), (*i*) and (*k*) the disqualification may be removed by an order of the Chief Commissioner in this behalf.

Qualifications of candidates.

V. No person shall be eligible for election under any sub-head of Regulation II, unless he possesses the qualifications prescribed for candidates in the Schedule regulating elections under that sub-head.

Disqualification of voters.

VI. No person shall be qualified to vote at any election held under these Regulations, if such person—

(*a*) is a female, or

(*b*) is a minor, or

(*c*) has been adjudged by a competent Court to be of unsound mind.

Oath of office.

VII. Every person, who is elected or nominated under these Regulations to be a Member of Council shall, before taking his seat, make, at a meeting of the Council, an oath or affirmation of his allegiance to the Crown, in the following form, namely:—

I, A. B., having been $\frac{\text{elected}}{\text{nominated}}$ a Member of the Legislative Council of the Chief Commissioner of the Central Provinces, do solemnly swear (*or* affirm) that I will bear true allegiance to His Majesty the King, Emperor of India, His heirs and successors, and that I will faithfully discharge the duty of the office upon which I am about to enter.

Power to declare seats vacant.

VIII. (1) If any person—

(*a*) not being eligible for election is elected under these Regulations, or

(*b*) having been elected or nominated, subsequently becomes subject to any of the disabilities stated in clause (*d*), (*f*), (*g*), (*h*) or (*i*) of Regulation IV, or fails to make the oath or affirmation prescribed by Regulation VII within such time as the Chief Commissioner considers reasonable,

the Chief Commissioner shall, by notification in the local official Gazette, declare his election or nomination to be void or his seat to be vacant.

(2) When any such declaration is made, the Chief Commissioner shall, by notification as aforesaid, call upon the electorate concerned to elect another person within such time as may be prescribed by such notification, or shall, with the sanction of the Governor General, nominate another person, as the case may be.

(3) If any person elected at such fresh election is not eligible for election, the Chief Commissioner may, with the like sanction, nominate any person who is eligible for election by the electorate concerned.

Candidates elected by several electorates.

IX. (1) If any person is elected by more than one electorate, he shall, by notice in writing signed by him and delivered to the Chief Secretary to the Local Government, within seven days from the date of the publication of the result of such elections in the local official Gazette, choose, or, in his default, the Chief Commissioner shall declare, for which of these electorates he shall serve, and the choice or declaration shall be conclusive.

(2) When any such choice or declaration has been made, the votes recorded for such person in any electorate for which he is not to serve shall be deemed not to have been given, and the candidate, if any, who, except for the said votes, would have been declared elected for such electorate, shall be deemed to have been duly elected for the same.

Term of office.

X. (1) Save as otherwise provided in these Regulations, the term of office of a Member shall be three years commencing from—

(*a*) in the case of a nominated Member, the date of the publication in the local official Gazette of the notification by which he is nominated,

(*b*) in the case of an elected Member, the date of the publication in the local official Gazette of the result of the election or, when the result of such election has been so published before the vacancy has occurred, from the date on which such vacancy occurs:

Provided that official Members and Members nominated under the provisions of sub-section (2) of Regulation I shall hold office for three years, or such shorter period as the Chief Commissioner may at the time of nomination determine.

(2) A Member elected or nominated to fill a casual vacancy occurring by reason of absence from India, inability to attend to duty, death, acceptance of office or resignation duly accepted, or otherwise, or a Member nominated on failure of an electorate to elect an eligible person shall hold office as long as the Member whose place he fills would have been entitled to hold office if the vacancy had not occurred.

Vacancies.

X. (1) When a vacancy occurs in the case of a Member who represents any interest specified in Regulation II, or at any time within three months of the date when such a vacancy will occur in the ordinary course of events, the Chief Commissioner shall, by notification as aforesaid, call upon the electorate concerned to elect a person for the purpose of filling the vacancy within such time as may be prescribed by such notification.

(2) When a vacancy occurs in the case of a nominated Member, the Chief Commissioner may, with the sanction of the Governor General, nominate any person to the vacancy:

Provided that, when a casual vacancy occurs in the case of an elected Member, the election shall always be made by the same electorate as that which elected the Member whose place is to be filled, and shall be subject to the same conditions in respect of eligibility of candidates for nomination as those which governed the election of such Member:

Provided further that, in the case of a Member nominated under Regulation I, sub-head B, clause (*b*), the Chief Commissioner shall, on the occurrence of the vacancy or at any time within three months of the date when such a vacancy will occur in the ordinary course of events, notify the vacancy or the impending vacancy in the local official Gazette.

Failure to elect.

XII. If within the time prescribed by a notification issued under Regulation VIII, clause (2), or Regulation XI, clause (1), the electorate concerned fails to elect, the Chief Commissioner may, with the like sanction, nominate at his discretion any person who is eligible for election by such electorate.

Quorum.

XIII. The power of making laws and regulations or of transacting other business vested in the Legislative Council of the Chief Commissioner of the Central Provinces shall be exercised only when eight or more Members of the Council are present.

Corrupt Practice.

XIV. (1) No election shall be valid if any corrupt practice is committed in connection therewith by the candidate elected.

(2) A person shall be deemed to commit a corrupt practice within the meaning of these Regulations —

(*i*) who, with a view to inducing any voter to give or to refrain from giving a vote in favour of any candidate, offers or gives any money or valuable consideration, or holds out any promise of individual profit, or holds out any threat of injury, to any person, or

(*ii*) who gives, procures or abets the giving of a vote in the name of a voter who is not the person giving such vote.

And a corrupt practice shall be deemed to be committed by a candidate, if it is committed with his knowledge and consent, or by a person who is acting under the general or special authority of such candidate with reference to the election.

Explanation.—A "promise of individual profit" includes a promise for the benefit of the person himself, or of any one in whom he is interested.

Non-compliance with rules.

XV. No election shall be invalid by reason of a non-compliance with the rules contained in the Schedules to these Regulations, or any mistake in the use of Forms annexed thereto, if it appears that the election was conducted in accordance with the principles laid down in such rules, and that such non-compliance or mistake did not affect the result of the election.

Disputes as to validity of elections.

XVI. (1) If the validity of any election is brought in question by any person qualified either to be elected or to vote at such election on the ground of the improper rejection or reception of a nomination, or of a vote, or of any corrupt practice in connection with such election, or for any other cause, such person may, at any time within fifteen days from the date of the publication of the result of such election in the local official Gazette, apply to the Local Government to set aside such election.

(2) The Chief Commissioner shall, after such inquiry (if any) as he may consider necessary, declare, by notification as aforesaid, whether the candidate whose election is questioned or any or what other person was duly elected, or whether the election was void.

(3) If the election is declared void, the Chief Commissioner shall, by notification as aforesaid, call upon the electorate concerned to elect another person within such time as may be prescribed by such notification.

(4) If within the time prescribed the electorate fails to elect, the Chief Commissioner may, with the sanction of the Governor General, nominate any person who is eligible for election by such electorate.

Finality of decisions.

XVII. The decision of the Chief Commissioner on any question that may arise as to the intention, construction or application of these Regulations shall be final.

First elections.

XVIII. (1) As soon as conveniently may be after these Regulations come into force, a Council shall be constituted in accordance with their provisions.

(2) For this purpose, the Chief Commissioner shall, by notification as aforesaid, call upon the electorates referred to in Regulation III to elect Members in accordance with these Regulations within such time as may be prescribed by such notification.

(3) If within the time so prescribed any such class fails to elect, the Chief Commissioner may nominate, at his discretion for a period not exceeding six months, any person who is eligible for election by such class.

SCHEDULE I.

[*See Regulation II, Sub-head (i), and Regulation III.*]

RULES FOR THE ELECTION OF A MEMBER OR MEMBERS BY THE MUNICIPAL COMMITTEES.

Preliminary.

1. (1) " Attesting Officer " means such officer as the Local Government may, by notification in the local official Gazette, appoint to perform all or any of the duties of the Attesting Officer under these rules, and includes any officer deputed for the time being by the Attesting Officer to perform his duties.

(2) " Returning Officer " means such officer as the Local Government may, by notification in the local official Gazette, appoint to perform all or any of the duties of the Returning Officer under these rules, and includes any officer deputed for the time being by the Returning Officer to perform his duties.

2. (1) The Local Government shall notify from time to time in the local official Gazette all Municipal Committees, as defined in the Central Provinces Municipal Act, XVI of 1903, in the Central Provinces outside the towns of Nagpur and Jubbulpore, which have a local income amounting to not less than five thousand rupees per annum.

Explanation.—For the purpose of these rules, " local income " means the total income of a Municipal Committee excluding the opening balance of the Municipal Fund, grants and contributions, and receipts under the Account Heads " Extraordinary " and " Debt ".

(2) Any Municipal Committee in regard to which a notification under sub-rule (1) is for the time being in force shall, for the purposes of this Schedule, be a " notified Municipal Committee ".

3. Of the three Members specified in Regulation II, sub-head (i), one shall be elected by the Members qualified to vote, other than those appointed *ex-officio* (hereinafter referred to as 'electors') of each of the following groups of Municipal Committees :

Group I.—The Municipal Committee of Jubbulpore town and the notified Municipal Committees of the Jubbulpore and Nerbudda Divisions.

Group II.—The Municipal Committee of Nagpur town and the notified Municipal Committees of the Nagpur and Chhattisgarh Divisions.

Group III.—The Municipal Committees of Nagpur and Jubbulpore Towns.

Electoral roll.

4. (1) On or before such date as may be appointed by the Local Government in this behalf, an electoral roll for each group in Form I annexed to this Schedule shall be published by the Returning Officer in the local official Gazette.

(2) As soon as may be after the publication of the roll in the said Gazette, a copy thereof shall be posted in a conspicuous place at the office of every Deputy Commissioner.

5. The electoral roll shall be conclusive evidence for the purpose of determining whether any person is an elector or not under these rules.

Revision of electoral roll.

6. (1) The electoral roll published under rule 4 shall be subject to revision from time to time as the Local Government may, by notification in the local official Gazette, direct.

(2) At the time so notified the Deputy Commissioner may of his own motion, and shall, on the application of any person whose name appears on the said roll, or who claims to have his name inserted therein, revise the said roll so far as it relates to his district.

(3) On such revision the Deputy Commissioner, after such inquiry and after hearing such persons as may be necessary, may order any addition to or alteration in the said roll.

(4) An appeal shall lie from any such order of the Deputy Commissioner to the Commissioner of the Division, whose decision shall be final.

(5) Such appeal, if any, shall be preferred within one week from the date of the order appealed against :

Provided that the Commissioner may, for sufficient reason, extend the time to a period not exceeding three weeks.

(6) As soon as may be after the expiry of the period for appealing or, if an appeal is preferred, after the appeal has been disposed of, the electoral roll, as added to or altered on such revision, shall be published and posted as provided in rule 4.

Qualifications and nomination of candidates.

7. (1) Any person not ineligible for election under these Regulations, and having a place of residence in any of the Divisions or towns, as the case may be, for the representation of the municipal committees of which he is a candidate, may be nominated as a candidate for election if he is, or has during the decade expiring on the date of the election for any period aggregating three years been, a Member of a Municipal Committee belonging to that group :

Provided that, in the case of Groups I, II and III respectively, only candidates resident respectively in the Jubbulpore Division, Chhattisgarh Division and Nagpur town shall be nominated at the first, third and succeeding alternate elections and that only candidates resident respectively in the Nerbudda Division, Nagpur Division and Jubbulpore town shall be nominated at the second, fourth and succeeding alternate elections.

Explanation.—The expression "alternate elections" shall not be deemed to include elections to fill casual vacancies.

(2) Such nomination shall be made by means of a nomination paper in Form II annexed to this Schedule, which shall be supplied by the Attesting Officer to any elector of the group concerned asking for the same.

(3) Every nomination paper shall be subscribed by two such electors as proposer and seconder :

Provided that no elector shall subscribe more than one nomination paper.

(4) Every nomination paper shall be presented for attestation on the date and at the time and place appointed by the Local Government in this behalf, and, if the Attesting Officer is satisfied that the nominee is willing to stand for election, shall be attested by the Attesting Officer in the manner prescribed on the face of the Form and without delay despatched by registered post to the Returning Officer.

8. Nomination papers which are not received by the Returning Officer before the date and time appointed for the scrutiny of nomination papers shall be rejected.

9. (1) A candidate who has been duly nominated for election may withdraw his candidature by a written and signed communication delivered to the Returning Officer not less than fourteen clear days before the date fixed for the attestation of voting papers, or if the period between the dates fixed for the scrutiny of nomination papers and the attestation of voting papers is less than fourteen clear days, not later than the date fixed for such scrutiny.

(2) The Returning Officer shall forthwith notify the withdrawal of any candidate in such manner as the Local Government may prescribe and shall communicate the withdrawal to the Attesting Officer, who shall thereupon remove from the voting paper the name of the candidate who has withdrawn his candidature.

(3) A candidate who has withdrawn his candidature shall not be allowed to cancel the withdrawal or to stand as a candidate for the same election.

Scrutiny of nomination papers.

10. (1) On the date and at the time appointed by the Local Government for the scrutiny of nomination papers, every candidate and his proposer and seconder may attend at the place appointed, and the Returning Officer shall allow them to examine the nomination papers of all candidates, which have been received by him as aforesaid.

(2) Where an elector subscribes two or more nomination papers, all such nomination papers, except the one first received by the Attesting Officer, shall be deemed to be invalid, and if the Returning Officer is unable to determine which of such nomination papers was so received first, both or all of such papers shall be deemed to be invalid.

(3) The Returning Officer shall examine the nomination papers, and shall decide all objections which may be made to any nomination paper on the ground that it is not valid under these rules, and may reject, either of his own motion or on such objection, any nomination paper on such ground; the decision of the Returning Officer shall in every case be endorsed by him on the nomination paper in respect of which such decision is given, and shall be final, save as provided in Regulations VIII and XVI.

Voting.

11. (1) If in any group one duly nominated candidate only stands for election, the Returning Officer shall forthwith declare such candidate to be elected.

(2) If more duly nominated candidates than one stand for election, the Returning Officer shall forthwith publish their names in such manner as the Local Government may prescribe.

12. (1) On such date and at such time as may be appointed by the Local Government in this behalf, every elector desirous of recording his vote shall attend for the purpose at the office of the Attesting Officer.

(2) The Attesting Officer shall deliver to each elector a voting paper in Form III annexed to this Schedule, in which shall be entered the names of the candidates, together with an envelope for enclosing the same.

(3) The elector shall sign the declaration on the back of the paper in the presence of the Attesting Officer in accordance with the instructions on the face thereof, and the Attesting Officer shall attest his signature in the manner prescribed by the same instructions.

(4) The elector shall then proceed to a place screened from observation, which shall be provided by the Attesting Officer, and there mark his vote on the voting paper in accordance with the instructions on the face thereof.

(5) The elector shall then place the voting paper in the envelope provided, and, after closing the envelope, shall deliver it to the Attesting Officer.

(6) Neglect on the part of the elector to comply with any of these instructions shall render his vote invalid.

(7) If an elector is unable to read or write or is by reason of blindness or other physical defect incapacitated from recording his vote as required by the foregoing provisions of this rule, the Attesting Officer shall assist him in such manner as may be necessary to mark the voting paper and sign the declaration on the back thereof.

13. (1) The Attesting Officer shall, at the close of the day appointed for the attestation of voting papers, despatch all the envelopes so delivered to him to the Returning Officer by registered post in a packet securely sealed with his official seal.

(2) On the day following, the Attesting Officer shall also despatch to the Returning Officer by registered post a list, in Form IV annexed to this Schedule, of the electors whose voting papers he has attested.

Counting of votes and declaration of result.

14. (1) On receiving the voting papers the Returning Officer shall examine them to see whether they have been correctly filled up.

(2) Where an elector records his vote on two or more voting papers, all such papers, except the one first received by the Attesting Officer, shall be deemed to be invalid, and if the Returning Officer is unable to determine which of such papers was so received first, both or all of such papers shall be deemed to be invalid.

(3) The Returning Officer shall endorse "rejected" with the grounds for such rejection on any voting paper which he may reject on the ground that it is invalid under these rules, and, save as provided in rule 15 (4) or in Regulation XVI, such rejection shall be final.

(4) The Returning Officer shall then fold the lower portion of every paper, whether valid or invalid, along the dotted line on the back, so as to conceal the names of the elector and the Attesting Officer, and shall seal down the portion thus folded with his official seal.

15. (1) The Returning Officer shall attend for the purpose of counting the votes on such date and at such time and place as may be appointed by the Local Government in this behalf.

(2) Every candidate may be present in person, or may send a representative, duly authorized by him in writing, to watch the process of counting.

(3) The Returning Officer shall show the voting papers sealed as provided by rule 14 to the candidates or their representatives.

(4) If an objection is made to any voting paper, on the ground that it is invalid under these rules, or to the rejection by the Returning Officer of any voting paper, it shall be decided at once by the Returning Officer, whose decision shall be final, save as provided in Regulations VIII and XVI.

(5) In such cases the Returning Officer shall record on the voting paper the nature of the objection and his decision thereon.

16. (1) When the counting of the votes has been completed, the Returning Officer shall forthwith declare the candidate to whom the largest number of votes has been given to be elected.

(2) Where an equality of votes is found to exist between any candidates, and the addition of a vote will entitle any one of the candidates to be declared elected, the determination of the person to whom such one additional vote shall be deemed to have been given shall be made by lot to be drawn in the presence of the Returning Officer and in such manner as he may determine.

17. Upon the completion of the counting and after the result has been declared by him, the Returning Officer shall seal up the voting papers and all other documents relating to the election, and shall retain the same for a period of six months, and shall thereafter cause them to be destroyed unless otherwise directed by an order of competent authority.

Publication of result.

18. The Returning Officer shall without delay report the result of the election to the Secretary to the Legislative Council of the Chief Commissioner of the Central Provinces, and the name of the candidate elected shall be published in the local official Gazette.

Appointment of dates, times and places.

19. The Local Government shall appoint, and shall notify, in such manner as it thinks fit, such date, and, if necessary, such time and place as it may think suitable for each of the following proceedings, namely:—

(*a*) the publication of the electoral roll under rule 4;

(*b*) the attestation of nomination papers under rule 7;

(*c*) the scrutiny of nomination papers under rule 10;

(*d*) the attestation of voting papers under rule 12; and

(*e*) the counting of votes under rule 15.

FORM I.

(*See rule* 4.)

ELECTORAL ROLL OF MEMBERS OF MUNICIPAL COMMITTEES FOR GROUP $\frac{\text{I}}{\text{II}}$ / $\frac{\text{II}}{\text{III}}$.

Serial No.	Name of Municipal Committee.	Name of elector.	Father's name.	Address.	Qualifications.
1	2	3	4	5	6
1					
2					
3					

FORM II.

(*See rule 7.*)

NOMINATION PAPER.

1. Name of candidate.

2. Father's name.

3. Age.

4. Address.

5. Place of residence.

6. Signature of proposer.

7. Signature of seconder.

Signed in my presence by and who are personally known to me (*or* who have been identified to my satisfaction) as being the persons whose names appear as and on the electoral roll of Group $\frac{\text{I}}{\text{II}}$ of Municipal Committees for the election of a Member to the Legislative Council of the Chief Commissioner of the Central Provinces.

Attesting Officer.

Instructions.

1. Nomination papers shall be attested by an Attesting Officer. Those not so attested shall be invalid.

2. They shall be presented for attestation on the day of and between the hours of and at the office of

FORM III.

(See rule 12.)

VOTING PAPER.

One Member is to be elected to the Legislative Council of the Chief Commissioner of the Central Provinces by the electors of Group $\frac{\text{I}}{\text{II}}{\text{III}}$ of Municipal Committees. The following [ ] candidates have been duly nominated :—

Serial No.	Names of candidates.	Vote.

Instructions.

1. Each elector has one vote.

2. He shall vote by placing, or causing to be placed, the mark × opposite the name of the candidate whom he prefers.

3. The voting paper shall be invalid if the mark × is placed opposite the name of more than one candidate, or if it is so placed as to render it doubtful to which candidate such mark is intended to apply.

4. Before his vote is marked the elector shall sign the declaration on the back of the paper in the presence of the Attesting Officer, who shall attest his signature. Without such attestation the voting paper shall be invalid.

5. Voting papers shall be presented for attestation and marked and delivered to the Attesting Officer enclosed in the envelope to be supplied to him for the purpose between the hours of and on the 19 .

I hereby declare that I am the person whose name appears as [ ] No. on the electoral roll of Group $\frac{\text{I}}{\text{II}}{\text{III}}$ of Municipal Committees for the election of a Member to the Legislative Council of the Chief Commissioner, Central Provinces.

C. N.,

Elector.

(Fold on this line.)

Signed in my presence by the elector, who is personally known to me (*or* who has been identified to my satisfaction).

X. Y.,

Attesting Officer.

FORM IV.

(See rule 13.)

LIST OF ELECTORS WHOSE VOTING PAPERS HAVE BEEN ATTESTED BY

The following is a list of all the electors whose voting papers have been attested by me :—

Serial No.	Name of Elector.	Address.

Attesting Officer.

SCHEDULE II.

[*See Regulation II, sub-head (ii), and Regulation III.*]

RULES FOR THE ELECTION OF A MEMBER OR MEMBERS BY THE DISTRICT COUNCILS.

Preliminary.

1. (1) " Attesting Officer " means such officer as the Local Government may, by notification in the local official Gazette, appoint to perform all or any of the duties of the Attesting Officer under these rules, and includes any officer deputed for the time being by the Attesting Officer to perform his duties.

(2) " Returning Officer " means such officer as the Local Government may, by notification in the local official Gazette, appoint to perform all or any of the duties of the Returning Officer under these rules, and includes any officer deputed for the time being by the Returning Officer to perform his duties.

2. Of the two members specified in Regulation II, sub-head (*ii*), one shall be elected by the members qualified to vote other than those appointed *ex-officio* (hereinafter referred to as 'electors') of each of the following groups of District Councils, namely:—

Group (*I*)—The District Councils of the Jubbulpore and Nerbudda Divisions.

Group (*II*)—The District Councils of the Nagpur and Chhattisgarh Divisions.

Electoral roll.

3. (1) On or before such date as may be appointed by the Local Government in this behalf an electoral roll for each Group in Form I annexed to this Schedule shall be published by the Returning Officer in the local official Gazette.

(2) As soon as may be after the publication of the roll in the said Gazette, a copy thereof shall be posted in a conspicuous place at the office of every Deputy Commissioner.

4. The electoral roll shall be conclusive evidence for the purpose of determining whether any person is an elector or not under these rules.

Revision of electoral roll.

5. (1) The electoral roll published under rule 3 shall be subject to revision from time to time as the Local Government may, by notification in the local official Gazette, direct.

(2) At the time so notified the Deputy Commissioner may of his own motion, and shall, on the application of any person whose name appears on the said roll or who claims to have his name inserted therein, revise the said roll so far as it relates to his district.

(3) On such revision the Deputy Commissioner, after such enquiry and after hearing such persons as may be necessary, may order any addition to or alteration in the said roll.

(4) An appeal shall lie from any such order of the Deputy Commissioner to the Commissioner of the division, whose decision shall be final.

(5) Such appeal, if any, shall be preferred within one week from the date of the order appealed against :

Provided that the Commissioner may, for sufficient reason, extend the time to a period not exceeding three weeks.

(6) As soon as may be after the expiry of the period for appealing or, if an appeal is preferred, after the appeal has been disposed of, the electoral roll, as added to or altered on such revision, shall be published and posted as provided in rule 3.

Qualifications and nomination of candidates.

6. (1) Any person not ineligible for election under these Regulations and having a place of residence in any of the Divisions for the representation of the District Councils of which he is a candidate may be nominated as a candidate for election if he is, or has during the decade expiring on the date of the election for any period aggregating three years been, a member of a District Council belonging to that Group :

Provided that in the case of Groups I and II respectively, only candidates resident respectively in the Nerbudda Division and Nagpur Division shall be nominated at the first, third and succeeding alternate elections and that only candidates resident respectively in the Jubbulpore Division and Chhattisgarh Division shall be nominated at the second, fourth and succeeding alternate elections.

(2) Such nomination shall be made by means of a nomination paper in Form II annexed to this Schedule, which shall be supplied by the Attesting Officer to any elector of the Group concerned asking for the same.

(3) Every nomination paper shall be subscribed by two such electors as proposer and seconder :

Provided that no elector shall subscribe more than one nomination paper.

(4) Every nomination paper shall be presented for attestation on the date and at the time and place appointed by the Local Government in this behalf, and, if the Attesting Officer is satisfied that the nominee is willing to stand for election, shall be attested by the Attesting Officer in the manner prescribed on the face of the Form and without delay despatched by registered post to the Returning Officer.

7. Nomination papers which are not received by the Returning Officer before the date and time appointed for the scrutiny of nomination papers shall be rejected.

8. (1) A candidate who has been duly nominated for election may withdraw his candidature by a written and signed communication delivered to the Returning Officer not less than fourteen clear days before the date fixed for the attestation of voting papers, or if the period between the dates fixed for the scrutiny of nomination papers and the attestation of voting papers is less than fourteen clear days, not later than the date fixed for such scrutiny.

(2) The Returning Officer shall forthwith notify the withdrawal of any candidate in such manner as the Local Government may prescribe, and shall communicate the withdrawal to the Attesting Officer, who shall thereupon remove from the voting paper the name of the candidate who has withdrawn his candidature.

(3) A candidate who has withdrawn his candidature shall not be allowed to cancel the withdrawal or to stand as a candidate for the same election.

Scrutiny of nomination papers.

9. (1) On the date and at the time appointed by the Local Government for the scrutiny of nomination papers, every candidate and his proposer and seconder may attend at the place appointed, and the Returning Officer shall allow them to examine the nomination papers of all candidates which have been received by him as aforesaid.

(2) Where an elector subscribes two or more nomination papers, all such nomination papers, except the one first received by the Attesting Officer, shall be deemed to be invalid and, if the Returning Officer is unable to determine which of such nomination papers was so received first, both or all of such papers shall be deemed to be invalid.

(3) The Returning Officer shall examine the nomination papers and shall decide all objections which may be made to any nomination paper on the ground that it is not valid under these rules, and may reject, either of his own motion or on such objection, any nomination paper on such ground ; the decision of the Returning Officer shall in every case be endorsed by him on the nomination paper in respect of which such decision is given, and shall be final, save as provided in Regulations VIII and XVI.

Voting.

10. (1) If in any Group one duly nominated candidate only stands for election, the Returning Officer shall forthwith declare such candidate to be elected.

(2) If more duly nominated candidates than one stand for election, the Returning Officer shall forthwith publish their names in such manner as the Local Government may prescribe.

11. (1) On such date and at such time as may be appointed by the Local Government in this behalf, every elector desirous of recording his vote shall attend for the purpose at the office of the Attesting Officer.

(2) The Attesting Officer shall deliver to each elector a voting paper in Form III annexed to this Schedule, in which shall be entered the names of the candidates, together with an envelope for enclosing the same.

(3) The elector shall sign the declaration on the back of the paper in the presence of the Attesting Officer in accordance with the instructions on the face thereof, and the Attesting Officer shall attest his signature in the manner prescribed by the same instructions.

(4) The elector shall then proceed to a place screened from observation, which shall be provided by the Attesting Officer, and there mark his vote on the voting paper in accordance with the instructions on the face thereof.

(5) The elector shall then place the voting paper in the envelope provided, and after closing the envelope shall deliver it to the Attesting Officer.

(6) Neglect on the part of the elector to comply with any of these instructions shall render his vote invalid.

(7) If an elector is unable to read or write, or is by reason of blindness or other physical defect incapacitated from recording his vote as required by the foregoing provisions of this rule, the Attesting Officer shall assist him in such manner as may be necessary to mark the voting paper and sign the declaration on the back thereof.

12. (1) The Attesting Officer shall, at the close of the day appointed for the attestation of voting papers, despatch all the envelopes so delivered to him to the Returning Officer by registered post in a packet securely sealed with his official seal.

(2) On the day following the Attesting Officer shall also despatch to the Returning Officer by registered post a list, in Form IV annexed to this Schedule, of the electors whose voting papers he has attested.

Counting of votes and declaration of result.

13. (1) On receiving the voting papers the Returning Officer shall examine them to see whether they have been correctly filled up.

(2) Where an elector records his vote on two or more voting papers, all such voting papers, except the one first received by the Attesting Officer, shall be deemed to be invalid and, if the Returning Officer is unable to determine which of such papers was so received first, both or all of such papers shall be deemed to be invalid.

(3) The Returning Officer shall endorse "rejected" with the grounds for such rejection on any voting paper which he may reject on the ground that it is invalid under these rules, and, save as provided in rule 14 (4) or in Regulation XVI, such rejection shall be final.

(4) The Returning Officer shall then fold the lower portion of every paper, whether valid or invalid, along the dotted line on the back, so as to conceal the names of the elector and the Attesting Officer, and shall seal down the portion thus folded with his official seal.

14. (1) The Returning Officer shall attend for the purpose of counting the votes on such date and at such time and place as may be appointed by the Local Government in this behalf.

(2) Every candidate may be present in person, or may send a representative, duly authorized by him in writing, to watch the process of counting.

(3) The Returning Officer shall show the voting papers sealed as provided by rule 13 to the candidates or their representatives.

(4) If an objection is made to any voting paper on the ground that it is invalid under these rules, or to the rejection by the Returning Officer of any voting paper, it shall be decided at once by the Returning Officer, whose decision shall be final, save as provided in Regulations VIII and XVI.

(5) In such cases the Returning Officer shall record on the voting paper the nature of the objection and his decision thereon.

15. (1) When the counting of the votes has been completed, the Returning Officer shall forthwith declare the candidates to whom the largest number of votes has been given to be elected.

(2) Where an equality of votes is found to exist between any candidates and the addition of a vote will entitle any one of the candidates to be declared elected, the determination of the person to whom such one additional vote shall be deemed to have been given shall be made by lot, to be drawn in the presence of the Returning Officer and in such manner as he may determine.

16. Upon the completion of the counting and after the result has been declared by him, the Returning Officer shall seal up the voting papers and all other documents relating to the election and shall retain the same for a period of six months and shall thereafter cause them to be destroyed unless otherwise directed by an order of competent authority.

Publication of result.

17. The Returning Officer shall without delay report the result of the election to the Secretary to the Legislative Council of the Chief Commissioner of the Central Provinces, and the name of the candidate elected shall be published in the local official Gazette.

Appointment of dates, times and places.

18. The Local Government shall appoint and notify, in such manner as it thinks fit, such date, and, if necessary, such time and place, as it may think suitable for each of the following proceedings, namely :—

(*a*) the publication of the electoral roll under rule 3;

(*b*) the attestation of nomination papers under rule 6;

(*c*) the scrutiny of nomination papers under rule 9;

(*d*) the attestation of voting papers under rule 11; and

(*e*) the counting of votes under rule 14.

FORM I.

(See rule 3.)

ELECTORAL ROLL OF MEMBERS OF DISTRICT COUNCILS FOR GROUP $\frac{I}{II}$.

Serial No.	Name of District Council.	Name of elector.	Father's name.	Address.	Qualifications.
1	2	3	4	5	6
1					
2					
3					

FORM II.

(*See rule 6.*)

NOMINATION PAPER.

1. Name of candidate.

2. Father's name.

3. Age.

4. Address.

5. Place of residence.

6. Signature of proposer.

7. Signature of seconder.

Signed in my presence by and who are personally known to me (*or* who have been identified to my satisfaction) as being the persons whose names appear as and on the electoral roll of Group $\frac{I}{II}$ of the District Councils for the election of a Member to the Legislative Council of the Chief Commissioner of the Central Provinces.

Attesting Officer.

Instructions.

1. Nomination papers shall be attested by an Attesting Officer. Those not so attested shall be invalid.

2. They shall be presented for attestation on the day of and between the hours of and at the office of .

FORM III.

(*See rule 12.*)

VOTING PAPER.

One Member is to be elected to the Legislative Council of the Chief Commissioner of the Central Provinces by the electors of Group $\frac{I}{II}$ of the District Councils of the Central Provinces. The following [ ] candidates have been duly nominated :—

Serial No.	Names of candidates.	Vote.

Instructions.

1. Each elector has one vote.

2. He shall vote by placing, or causing to be placed, the mark × opposite the name of the candidate whom he prefers.

3. The voting paper shall be invalid if the mark × is placed opposite the name of more than one candidate, or if it is so placed as to render it doubtful to which candidate such mark is intended to apply.

4. Before his vote is marked the elector shall sign the declaration on the back of the paper in the presence of the Attesting Officer, who shall attest his signature. Without such attestation the voting paper shall be invalid.

5. Voting papers shall be presented for attestation and marked and delivered to the Attesting Officer enclosed in the envelope to be supplied to him for the purpose between the hours of and on the 19 .

I hereby declare that I am the person whose name appears as [ ] No. on the electoral roll of Group $\frac{I}{II}$ of District Councils of the Central Provinces for the election of a Member to the Legislative Council of the Chief Commissioner, Central Provinces.

C. N.,

Elector.

(*Fold on this line.*)

Signed in my presence by the elector, who is personally known to me (*or* who has been identified to my satisfaction).

X. Y.,

Attesting Officer.

FORM IV.

(*See rule* 12.)

LIST OF ELECTORS WHOSE VOTING PAPERS HAVE BEEN ATTESTED BY

The following is a list of all the electors whose voting papers have been attested by me :—

Serial No.	Name of Elector.	Address.

Attesting Officer.

SCHEDULE III.

[*See Regulation II, Sub-head (iii), and Regulation III.*]

RULES FOR THE ELECTION OF A MEMBER OR MEMBERS BY LANDHOLDERS.

Preliminary.

1. (1) " Attesting Officer " means such officer as the Local Government may, by notification in the local official Gazette, appoint to perform all or any of the duties of the Attesting Officer under these rules, and includes any officer deputed for the time being by the Attesting Officer to perform his duties.

(2) " Returning Officer " means such officer as the Local Government may, by notification in the local official Gazette, appoint to perform all or any of the duties of the Returning Officer under these rules, and includes any officer deputed for the time being by the Returning Officer to perform his duties.

2. Of the two members specified in Regulation II, sub-head (iii), one shall be elected by the landholders of each of the following groups :—

Group I.—The Jubbulpore and Nerbudda Divisions.

Group II.—The Nagpur and Chhattisgarh Divisions.

Qualifications of Electors.

3. (1) The election shall be made by all persons qualified to vote, having a place of residence in the group concerned, and holding land therein in proprietary right—

(*a*) whose land is assessed to land revenue at not less than Rs. 3,000 ; or

(*b*) whose names are entered in the Durbar list prepared under the authority of the Local Government ; or

(*c*) who hold the office of Honorary Magistrate :

Provided that no person shall have more than one vote though he may possess more than one of the qualifications above described.

(2) In the case of a Hindu joint family qualified under the last sub-section, the name of the manager of the family, or of any member of the family, whom the manager may appoint in writing in this behalf, shall be entered in the roll as the representative, for the purpose of the roll, of such family.

(3) In determining the eligibility of a landholder as an elector, only land-revenue assessed on such land or share in land as he may hold in his own personal right and not in a fiduciary capacity shall be taken into account. Any portion of his estate which is revenue free, either wholly or in part, shall be taken as supporting the land revenue to which it would be assessed but for the fact that it is revenue free, either wholly or in part.

(4) If the amount paid by the landholder in respect of any such share of an estate is not definitely known, the Deputy Commissioner of the district in which such estate is situated shall estimate the amount so paid in respect of such share and his decision shall be final.

(5) If a landholder pays land revenue in respect of estates or shares of estates situated in two electoral groups, and if his payments in none of these groups reach the amount prescribed, his payments within both groups shall be aggregated and if such aggregate reaches the limit prescribed, he shall be entitled to be entered in the electoral roll of the group in which he makes the larger payment.

Electoral Roll.

4. (1) On or before such date as may be appointed by the Local Government in this behalf, an electoral roll of landholders qualified under rule 3, hereinafter referred to as electors, for each group in Form I annexed to this Schedule shall be published by the Returning Officer in the local official Gazette.

(2) A person who is qualified as an elector for both groups may choose the group in which he desires to vote, but shall not be entitled to have his name entered in the electoral roll of more than one group.

(3) As soon as may be after the publication of the roll in the local official Gazette, a copy thereof shall be posted in a conspicuous place at the office of every Deputy Commissioner.

5. The electoral roll shall be conclusive evidence for the purpose of determining whether any person is an elector or not under these rules.

Revision of Electoral Roll.

6. (1) The electoral roll published under rule 4 shall be subject to revision from time to time as the Local Government may, by notification in the local official Gazette, direct.

(2) At the time so notified the Deputy Commissioner may of his own motion, and shall, on the application of any person whose name appears on the said roll or who claims to have his name inserted therein, revise the said roll so far as it relates to his district.

(3) On such revision the Deputy Commissioner, after such enquiry and after hearing such persons as may be necessary, may order any addition to or alteration in the said roll.

(4) An appeal shall lie from any such order of the Deputy Commissioner to the Commissioner of the Division, whose decision shall be final.

(5) Such appeal, if any, shall be preferred within one week from the date of the order appealed against:

Provided that the Commissioner may, for sufficient reason, extend the time to a period not exceeding three weeks.

(6) As soon as may be after the expiry of the period for appealing or, if an appeal is preferred, after the appeal has been disposed of, the electoral roll. as added to or altered on such revision, shall be published and posted as provided in rule 4.

Qualifications and Nomination of Candidates.

7. (1) Any person not ineligible for election under these Regulations, whose name is on the electoral roll, may be nominated as a candidate for election.

(2) Such nomination shall be made by means of a nomination paper in Form II annexed to this Schedule, which shall be supplied by the Attesting Officer to any elector of the group concerned asking for the same.

(3) Every nomination paper shall be subscribed by two such electors as proposer and seconder :

Provided that no elector shall subscribe more than one nomination paper.

(4) Every nomination paper shall be presented for attestation on the date and at the time and place appointed by the Local Government in this behalf, and, if the Attesting Officer is satisfied that the nominee is willing to stand for election, shall be attested by the Attesting Officer in the manner prescribed on the face of the Form and without delay despatched by registered post to the Returning Officer.

8. Nomination papers which are not received by the Returning Officer before the date and time appointed for the scrutiny of nomination papers shall be rejected.

9. (1) A candidate who has been duly nominated for election may withdraw his candidature by a written and signed communication delivered to the Returning Officer not less than fourteen clear days before the date fixed for the attestation of voting papers or, if the period between the dates fixed for the scrutiny of nomination papers and the attestation of voting papers is less than fourteen clear days, not later than the date fixed for such scrutiny.

(2) The Returning Officer shall forthwith notify the withdrawal of any candidate in such manner as the Local Government may prescribe, and shall communicate the withdrawal to the Attesting Officer, who shall thereupon remove from the voting paper the name of the candidate who has withdrawn his candidature.

(3) A candidate who has withdrawn his candidature shall not be allowed to cancel the withdrawal or to stand as a candidate for the same election.

Scrutiny of nomination papers.

10. (1) On the date and at the time appointed by the Local Government for the scrutiny of nomination papers, every candidate and his proposer and seconder may attend at the place appointed, and the Returning Officer shall allow them to examine the nomination papers of all candidates which have been received by him as aforesaid.

(2) Where an elector subscribes two or more nomination papers, all such nomination papers, except the one first received by the Attesting Officer, shall be deemed to be invalid, and, if the Returning Officer is unable to determine which of such nomination papers was so received first, both or all of such papers shall be deemed to be invalid.

(3) The Returning Officer shall examine the nomination papers and shall decide all objections which may be made to any nomination paper on the ground that it is not valid under these rules, and may reject, either of his own motion or on such objection, any nomination paper on such ground ; the decision of the Returning Officer shall in every case be endorsed by him on the nomination paper in respect of which such decision is given, and shall be final, save as provided in Regulations VIII and XVI.

Voting.

11. (1) If in any group one duly nominated candidate only stands for election, the Returning Officer shall forthwith declare such candidate to be elected.

(2) If more duly nominated candidates than one stand for election, the Returning Officer shall forthwith publish their names in such manner as the Local Government may prescribe.

12. (1) On such date and at such time as may be appointed by the Local Government in this behalf, every elector desirous of recording his vote, shall attend for the purpose at the office of the Attesting Officer.

(2) The Attesting Officer shall deliver to each elector a voting paper in Form III annexed to this Schedule, in which shall be entered the names of the candidates, together with an envelope for enclosing the same.

(3) The elector shall sign the declaration on the back of the paper in the presence of the Attesting Officer in accordance with the instructions on the face thereof, and the Attesting Officer shall attest his signature in the manner prescribed by the same instructions.

(4) The elector shall then proceed to a place screened from observation, which shall be provided by the Attesting Officer, and there mark his vote on the voting paper in accordance with the instructions on the face thereof.

(5) The elector shall then place the voting paper in the envelope provided, and after closing the envelope shall deliver it to the Attesting Officer.

(6) Neglect on the part of the elector to comply with any of these instructions shall render his vote invalid.

(7) If an elector is unable to read or write, or is by reason of blindness or other physical defect incapacitated from recording his vote as required by the foregoing provisions of this rule, the Attesting Officer shall assist him in such manner as may be necessary to mark the voting paper and sign the declaration on the back thereof.

13. (1) The Attesting Officer shall, at the close of the day appointed for the attestation of voting papers, despatch all the envelopes so delivered to him to the Returning Officer by registered post in a packet securely sealed with his official seal.

(2) On the day following, the Attesting Officer shall also despatch to the Returning Officer by registered post a list, in Form IV annexed to this Schedule, of the electors whose voting papers he has attested.

Counting of Votes and Declaration of Result.

14. (1) On receiving the voting papers the Returning Officer shall examine them to see whether they have been correctly filled up.

(2) Where an elector records his vote on two or more voting papers, all such voting papers, except the one first received by the Attesting Officer, shall be deemed to be invalid, and, if the Returning Officer is unable to determine which of such papers was so received first, both or all of such papers shall be deemed to be invalid.

(3) The Returning Officer shall endorse "rejected," with the grounds for such rejection, on any voting paper which he may reject on the ground that it is invalid under these rules, and save as provided in rule 15 (4) or in Regulation XVI such rejection shall be final.

(4) The Returning Officer shall then fold the lower portion of every paper, whether valid or invalid, along the dotted line on the back, so as to conceal the names of the elector and the Attesting Officer, and shall seal down the portion thus folded with his official seal.

15. (1) The Returning Officer shall attend for the purpose of counting the votes on such date and at such time and place as may be appointed by the Local Government in this behalf.

(2) Every candidate may be present in person, or may send a representative, duly authorized by him in writing, to watch the process of counting.

(3) The Returning Officer shall show the voting papers sealed as provided by rule 14 to the candidates or their representatives.

(4) If any objection is made to any voting paper on the ground that it is invalid under these rules, or to the rejection by the Returning Officer of any voting paper, it shall be decided at once by the Returning Officer, whose decision shall be final, save as provided in Regulations VIII and XVI.

(5) In such cases the Returning Officer shall record on the voting paper the nature of the objection and his decision thereon.

16. (1) When the counting of the votes has been completed, the Returning Officer shall forthwith declare the candidate to whom the largest number of votes has been given to be elected.

(2) Where an equality of votes is found to exist between any candidates and the addition of a vote will entitle any one of the candidates to be declared elected, the determination of the person to whom such one additional vote shall be deemed to have been given shall be made by lot to be drawn in the presence of the Returning Officer and in such manner as he may determine.

17. Upon the completion of the counting and after the result has been declared by him, the Returning Officer shall seal up the voting papers and all other documents relating to the election, and shall retain the same for a period of six months, and shall thereafter cause them to be destroyed unless otherwise directed by an order of competent authority.

Publication of Result.

18. The Returning Officer shall without delay report the result of the election to the Secretary to the Legislative Council of the Chief Commissioner of the Central Provinces, and the name of the candidate elected shall be published in the local official Gazette.

Appointment of dates, times and places.

19. The Local Government shall appoint and notify, in such manner as it thinks fit, such date, and, if necessary, such time and place, as it may think suitable for each of the following proceedings, namely :—

(*a*) the publication of the electoral roll under rule 4 ;

(*b*) the attestation of nomination papers under rule 7 ;

(*c*) the scrutiny of nomination papers under rule 10 ;

(*d*) the attestation of voting papers under rule 12 ; and

(*e*) the counting of votes under rule 15.

FORM I.

(*See rule* 4.)

ELECTORAL ROLL OF LANDHOLDERS OF GROUP $\frac{I}{II}$ IN THE CENTRAL PROVINCES FOR THE ELECTION OF A MEMBER TO THE LEGISLATIVE COUNCIL OF THE CHIEF COMMISSIONER OF THE CENTRAL PROVINCES.

Serial No. on roll.	Serial No. on District list.	Name of elector.	Father's name.	Address.	Qualifications.
1	2	3	4	5	6

Instructions.

1. The roll shall be prepared by districts, each elector's name being entered under the district in which he resides.

2. In the case of an elector qualified under rule 3 (1) (*a*) who pays land revenue, or holds land free of revenue in more than one district, details of the land revenue payable, or nominally assessed in each district, shall be entered in column 6, where the land revenue payable or nominally assessed in any one district does not exceed Rs. 3,000.

3. In determining the eligibility of a landholder as an elector only land revenue payable on account of such land or share in land as he may hold in his own personal right and not in a fiduciary capacity shall be taken into account. Any portion of his estate which is revenue free, either wholly or in part, shall be taken as supporting the land revenue to which it would be assessed but for the fact that it is revenue free, either wholly or in part.

FORM II.

(*See rule* 7.)

NOMINATION PAPER.

1. Name of candidate.
2. Father's name.
3. Age.
4. Address.
5. Place of Residence.
6. Signature of proposer.
7. Signature of Seconder.

Signed in my presence by and who are personally known to me (*or* who have been identified to my satisfaction) as being the persons whose names appear as and on the electoral roll of landholders of group $\frac{I}{II}$ in the Central Provinces for the election of a Member to the Legislative Council of the Chief Commissioner of the Central Provinces.

Attesting Officer.

Instructions.

1. Nomination papers sha be attested by an Attesting Officer. Those not so attested shall be invalid.

2. They shall be presented for attestation on the day of and between the hours of and at the office of

FORM III.

(*See rule* 12.)

VOTING PAPER.

One Member is to be elected to the Legislative Council of the Chief Commissioner of the Central Provinces by the landholders of Group $\frac{I}{II}$ in the Central Provinces. The following [ ] candidates have been duly nominated :—

Serial No.	Names of candidates.	Vote.

Instructions.

1. Each elector has one vote.

2. He shall vote by placing, or causing to be placed, the mark × opposite the name of the candidate whom he prefers.

3. The voting paper shall be invalid if the mark × is placed opposite the name of more than one candidate, or if it is so placed as to render it doubtful to which candidate such mark is intended to apply.

4. Before his vote is marked the elector shall sign the declaration on the back of the paper in the presence of the Attesting Officer, who shall attest his signature. Without such attestation the voting paper shall be invalid.

5. Voting papers shall be presented for attestation and marked and delivered to the Attesting Officer enclosed in the envelope to be supplied to him for the purpose between the hours of and on the day of 19 .

I hereby declare that I am the person whose name appears as [ ] No. on the electoral roll of Group $\frac{I}{II}$ of the landholders of the Central Provinces for the election of a member to the Legislative Council of the Chief Commissioner of the Central Provinces.

C. N.,

Elector.

(Fold on this line.)

Signed in my presence by the elector, who is personally known to me (*or* who has been identified to my satisfaction).

X. Y.,

Attesting Officer.

FORM IV.

(*See rule 13.*)

LIST OF ELECTORS WHOSE VOTING PAPERS HAVE BEEN ATTESTED BY

The following is a list of all the electors whose voting papers have been attested by me :—

Serial No.	Name of Elector.	Address.

Attesting Officer.

REGULATIONS FOR THE ELECTION OF PERSONS RESIDENT IN BERAR WITH A VIEW TO THEIR BEING NOMINATED AS MEMBERS OF THE LEGISLATIVE COUNCIL OF THE CHIEF COMMISSIONER OF THE CENTRAL PROVINCES.

(Published in notification No. 3620-I. B. of the Government of India in the Foreign Department, dated the 15th November 1913.)

Election for nomination.

I. There shall be elected in accordance with these Regulations non-official persons resident in Berar who shall ordinarily be three in number with a view to their being nominated as members of the Legislative Council of the Chief Commissioner of the Central Provinces.

Electorates and electoral procedure.

II. (1) Save as otherwise provided by these Regulations, the election of the three persons specified in Regulation I shall be effected as follows, namely :—

(i) By the Municipal Committees of Berar 1

(ii) By the District Boards of Berar 1

(iii) By the Landholders of Berar 1

(2) The election shall be effected by the electorates and in accordance with the procedures respectively prescribed in the Schedules to these Regulations.

Ineligible candidates.

III. No person shall be eligible for election under Regulation II, if such person —

(*a*) is not resident in Berar, or

(*b*) is an official, or

(*c*) is a female, or

(*d*) has been adjudged by a competent Court to be of unsound mind, or

(*e*) is under twenty-five years of age, or

(*f*) is an uncertificated bankrupt or an undischarged insolvent, or

(*g*) has been dismissed from the Government service, or

(*h*) has been sentenced by a Criminal Court to imprisonment for an offence punishable with imprisonment for a term exceeding six months or to transportation, or has been ordered to find security for good behaviour under the Code of Criminal Procedure, such sentence or order not having subsequently been reversed or remitted, or the offender pardoned, or

(*i*) has been debarred from practising as a legal practitioner by order of any competent authority, or

(*k*) has been declared by the Local Administration to be of such reputation and antecedents that his election would, in its opinion, be contrary to the public interests :

Provided that in cases (*g*), (*h*), (*i*) and (*k*), the disqualification may be removed by an order of the Local Administration in this behalf.

Qualifications of candidates.

IV. No person shall be eligible for election under any sub-head of Regulation II, unless he possesses the qualifications prescribed for candidates in the Schedule regulating elections under that sub-head.

Disqualification of voters.

V. No person shall be qualified to vote at any election held under these Regulations if such person—

(*a*) is a female, or

(*b*) is a minor, or

(*c*) has been adjudged by a competent Court to be of unsound mind.

Power to cancel election.

VI. (1) If any person—

(*a*) not being eligible for election, is elected under these Regulations, or

(*b*) having been so elected or having been selected under Regulation VI (3), IX, XII (4) or XV (2) subsequently becomes subject to any of the disabilities stated in clause (*d*), (*f*), (*g*), (*h*) or (*i*) of Regulation III, the Local Administration shall, by notification in the local official Gazette, declare his election to be void, or cancel his election.

(2) When any such declaration is made, or any such selection is cancelled, the Local Administration shall, by notification as aforesaid, call upon the electorate concerned to elect another person, within such time as may be prescribed by such notification.

(3) If any person elected at such fresh election is not eligible for election, the Local Administration may select in his place any person who is eligible for election by the electorate concerned.

Candidates elected by several electorates.

VII. (1) If any person is elected by more than one electorate, he shall, by notice in writing signed by him and delivered to the Chief Secretary to the Local Administration within seven days from the date of the publication of the result of such elections in the local official Gazette, choose or in his default, the Local Administration shall declare, which of these electorates he shall represent, and the choice or declaration shall be conclusive.

(2) When any such choice or declaration has been made, the votes recorded for such person in any electorate which he will not represent shall be deemed not to have been given, and the candidate, if any, who, except for the said votes would have been declared elected for such electorate, shall be deemed to have been duly elected for the same.

Vacancies.

VIII. When a vacancy or an impending vacancy in the office of a Member of the Legislative Council of the Chief Commissioner of the Central Provinces, nominated under Regulation I, sub-head B, clause (*b*) of the Regulations for the nomination and election of members of that Council is notified, the Local Administration shall, by notification as aforesaid, call upon the electorate concerned to elect a person for the purpose of being nominated to fill the vacancy within such time as may be prescribed by such notification.

Failure to elect.

IX. If within the time prescribed by a notification issued under Regulation VI, clause (2), or Regulation VIII, the electorate concerned fails to elect, the Local Administration may select at its discretion any person who is eligible for election by such electorate.

Corrupt practices.

X. (1) No election shall be valid if any corrupt practice is committed in connection therewith by the candidate elected.

(2) A person shall be deemed to commit a corrupt practice within the meaning of these Regulations—

(i) who, with a view to inducing any voter to give or to refrain from giving a vote in favour of any candidate, offers or gives any money or valuable consideration, or holds out any promise of individual profit, or holds out any threat of injury, to any person, or

(ii) who gives, procures or abets the giving of a vote in the name of a voter who is not the person giving such vote.

And a corrupt practice shall be deemed to be committed by a candidate, if it is committed with his knowledge and consent, or by a person who is acting under the general or special authority of such candidate with reference to the election.

Explanation.—A "promise of individual profit" includes a promise for the benefit of the person himself, or of any one in whom he is interested.

Non-compliance with rules.

XI. No election shall be invalid by reason of a non-compliance with the rules contained in the Schedules to these Regulations, or any mistake in the use of Forms annexed thereto, if it appears that the election was conducted in accordance with the principles laid down in such rules, and that such non-compliance or mistake did not affect the result of the election.

Disputes as to validity of elections.

XII. (1) If the validity of any election is brought in question by any person qualified either to be elected or to vote at such election, on the ground of the improper rejection or reception of a nomination, or of a vote, or of any corrupt practice in connection with such election or for any other cause, such person may, at any time within fifteen days from the date of the publication of the result of such election in the local official Gazette, apply to the Local Administration to set aside such election.

(2) The Local Administration shall, after such inquiry (if any) as it may consider necessary, declare by notification as aforesaid whether the candidate whose election is questioned or any or what other person was duly elected, or whether the election was void.

(3) If the election is declared void, the Local Administration shall, by notification as aforesaid, call upon the electorate concerned to elect another person within such time as may be prescribed by such notification.

(4) If within the time prescribed the electorate fails to elect, the Local Administration may select any person who is eligible for election by such electorate.

Finality of decisions.

XIII. The decision of the Local Administration on any question that may arise as to the intention, construction or application of these Regulations shall be final.

Notification of election or selection.

XIV. (1) As soon as may be after the expiry of the period for making an application under Regulation XII, or where such an application has been made, after the application is disposed of, the Local Administration shall publish in the local official Gazette the name of the person, if any, who has been declared for to be elected for nomination as member of the Legislative Council of the Chief Commissioner of the Central Provinces.

(2) When a person is selected by the Local Administration under Regulation [illegible] IX, XII (4) or XV (2) the name of the person so selected shall be published in the local official Gazette. When any such selection is cancelled by the Local Administration under these Regulations, the fact shall be notified in the local official Gazette.

First elections.

XV. (1) As soon as conveniently may be after these Regulations come into force, the Local Administration shall, by notification as aforesaid, call upon the electorates referred to in Regulation II to elect persons in accordance with these Regulations within such time as may be prescribed by such notification.

(2) If within the time so prescribed any such class fails to elect, the Local Administration may at its discretion select any person who is eligible for election by such class.

SCHEDULE I.

[*See Regulation II, sub-head (i), and Regulation II* (2).]

RULES FOR ELECTION BY THE MUNICIPAL COMMITTEES IN BERAR.

Preliminary.

1. (1) "Attesting Officer" means such officer as the Local Administration may, by notification in the local official Gazette appoint to perform all or any of the duties of the Attesting Officer under these rules, and includes any officer deputed for the time being by the Attesting Officer to perform his duties.

(2) "Returning Officer" means such officer as the Local Administration may, by notification in the local official Gazette, appoint to perform all or any of the duties of the Returning Officer under these rules, and includes any officer deputed for the time being by the Returning Officer to perform his duties.

2. (1) The Local Administration shall notify from time to time in the local official Gazette all Municipal Committees in Berar, as defined in the Berar Municipal Law, 1886, which have a local income amounting to not less than five thousand rupees per annum.

Explanation—

For the purpose of these rules "local income" means the total income of a Municipal Committee excluding the opening balance of the Municipal fund, grants and contributions, and receipts under the Account Heads "Extraordinary" and "Debt."

(2) Any Municipal Committee in regard to which a notification under sub-rule (1) is for the time being in force shall, for the purposes of this Schedule, be a "notified Municipal Committee."

3. The person specified in Regulation II, sub-head (i), shall be elected by the Members qualified to vote other than those appointed *ex-officio* (hereinafter referred to as 'electors') of notified Municipal Committees of Berar.

Electoral roll.

4. (1) On or before such date as may be appointed by the Local Administration in this behalf, an electoral roll in Form I annexed to this Schedule shall be published by the Returning Officer in the local official Gazette.

(2) As soon as may be after the publication of the roll in the said Gazette, a copy thereof shall be posted in a conspicuous place at the office of every Deputy Commissioner.

5. The electoral roll shall be conclusive evidence for the purpose of determining whether any person is an elector or not under these rules.

Revision of electoral roll.

6. (1) The electoral roll published under rule 4 shall be subject to revision from time to time as the Local Administration may, by notification in the local official Gazette, direct.

(2) At the time so notified the Deputy Commissioner may of his own motion, and shall, on the application of any person whose name appears on the said roll, or who claims to have his name inserted therein, revise the said roll so far as it relates to his district.

(3) On such revision the Deputy Commissioner, after such inquiry and after hearing such persons as may be necessary, may order any addition to or alteration in the said roll.

(4) An appeal shall lie from any such order of the Deputy Commissioner to the Commissioner of Berar whose decision shall be final.

(5) Such appeal, if any, shall be preferred within one week from the date of the order appealed against:

Provided that the Commissioner may, for sufficient reason, extend the time to a period not exceeding three weeks.

(6) As soon as may be after the expiry of the period for appealing or, if an appeal is preferred, after the appeal has been disposed of, the electoral roll, as added to or altered on such revision, shall be published and posted as provided in rule 4.

Qualifications and nomination of candidates.

7. (1) Any person not ineligible for election under these Regulations, and having a place of residence in Berar may be nominated as a candidate for election if he is, or has, during the decade expiring on the date of the election, for any period aggregating three years been, a Member of a Municipal Committee in Berar.

(2) Such nomination shall be made by means of a nomination paper in Form II annexed to this Schedule, which shall be supplied by the Attesting Officer to any elector asking for the same.

(3) Every nomination paper shall be subscribed by two such electors as proposer and seconder :

Provided that no elector shall subscribe more than one nomination paper.

(4) Every nomination paper shall be presented for attestation on the date and at the time and place appointed by the Local Administration in this behalf, and if the Attesting Officer is satisfied that the nominee is willing to stand for election, shall be attested by the Attesting Officer in the manner prescribed on the face of the Form and without delay despatched by registered post to the Returning Officer.

8. Nomination papers which are not received by the Returning Officer before the date and time appointed for the scrutiny of nomination papers shall be rejected.

9. (1) A candidate who has been duly nominated for election may withdraw his candidature by a written and signed communication delivered to the Returning Officer not less than fourteen clear days before the date fixed for the attestation of voting papers, or if the period between the dates fixed for the scrutiny of nomination papers and the attestation of voting papers is less than fourteen clear days, not later than the date fixed for such scrutiny.

(2) The Returning Officer shall forthwith notify the withdrawal of any candidate in such manner as the Local Administration may prescribe and shall communicate the withdrawal to the Attesting Officer, who shall thereupon remove from the voting paper the name of the candidate who has withdrawn his candidature.

(3) A candidate who has withdrawn his candidature shall not be allowed to cancel the withdrawal or to stand as a candidate for the same election.

Scrutiny of nomination papers.

10. (1) On the date and at the time appointed by the Local Administration for the scrutiny of nomination papers, every candidate and his proposer and seconder may attend at the place appointed, and the Returning Officer shall allow them to examine the nomination papers of all candidates which have been received by him as aforesaid.

(2) Where an elector subscribes two or more nomination papers, all such nomination papers except the one first received by the Attesting Officer shall be deemed to be invalid, and if the Returning Officer is unable to determine which of such nomination papers was so received first, both or all of such papers shall be deemed to be invalid.

(3) The Returning Officer shall examine the nomination papers, and shall decide all objections which may be made to any nomination paper on the ground that it is not valid under these rules, and may reject, either of his own motion or on such objection, any nomination paper on such ground ; the decision of the Returning Officer shall in every case be endorsed by him on the nomination paper in respect of which such decision is given, and shall be final save as provided in Regulations VI and XII.

Voting.

11. (1) If one duly nominated candidate only stands for election, the Returning Officer shall forthwith declare such candidate to be elected.

(2) If more duly nominated candidates than one stand for election, the Returning Officer shall forthwith publish their names in such manner as the Local Administration may prescribe.

12. (1) On such date and at such time as may be appointed by the Local Administration in this behalf, every elector desirous of recording his vote shall attend for the purpose at the office of the Attesting Officer.

(2) The Attesting Officer shall deliver to each elector a voting paper in Form III annexed to this Schedule in which shall be entered the names of the candidates, together with an envelope for enclosing the same.

(3) The elector shall sign the declaration on the back of the paper in the presence of the Attesting Officer in accordance with the instructions on the face thereof, and the Attesting Officer shall attest his signature in the manner prescribed by the same instructions.

(4) The elector shall then proceed to a place screened from observation, which shall be provided by the Attesting Officer and there mark his vote on the voting paper in accordance with the instructions on the face thereof.

(5) The elector shall then place the voting paper in the envelope provided, and, after closing the envelope, shall deliver it to the Attesting Officer.

(6) Neglect on the part of the elector to comply with any of these instructions shall render his vote invalid.

(7) If an elector is unable to read or write or is by reason of blindness or other physical defect incapacitated from recording his vote as required by the foregoing provisions of this rule, the Attesting Officer shall assist him in such manner as may be necessary to mark the voting paper and sign the declaration on the back thereof.

13. (1) The Attesting Officer shall, at the close of the day appointed for the attestation of voting papers, despatch all the envelopes so delivered to him to the Returning Officer by registered post in a packet securely sealed with his official seal.

(2) On the day following, the Attesting Officer shall also despatch to the Returning Officer by registered post a list in Form IV annexed to this Schedule of the electors whose voting papers he has attested.

Counting of votes and declaration of result.

14. (1) On receiving the voting papers the Returning Officer shall examine them to see whether they have been correctly filled up.

(2) Where an elector records his vote on two or more voting papers, all such papers except the one first received by the Attesting Officer shall be deemed to be invalid, and if the Returning Officer is unable to determine which of such papers was so received first, both or all of such papers shall be deemed to be invalid.

(3) The Returning Officer shall endorse "rejected" with the grounds for such rejection on any voting paper which he may reject on the ground that it is invalid under these rules, and, save as provided in rule 15 (4) or in Regulation XII, such rejection shall be final.

(4) The Returning Officer shall then fold the lower portion of every paper, whether valid or invalid, along the dotted line on the back, so as to conceal the names of the elector and the Attesting Officer, and shall seal down the portion thus folded with his official seal.

15. (1) The Returning Officer shall attend for the purpose of counting the votes on such date and at such time and place as may be appointed by the Local Administration in this behalf.

(2). Every candidate may be present in person, or may send a representative, duly authorized by him in writing to watch the process of counting.

(3) The Returning Officer shall show the voting papers sealed as provided by rule 14 to the candidates or their representatives.

(4) If an objection is made to any voting paper on the ground that it is invalid under these rules or to the rejection by the Returning Officer of any voting paper, it shall be decided at once by the Returning Officer whose decision shall be final, save as provided in Regulations VI and XII.

(5) In such cases the Returning Officer shall record on the voting paper the nature of the objection and his decision thereon.

16. (1) When the counting of the votes has been completed, the Returning Officer shall forthwith declare the candidate to whom the largest number of votes has been given to be elected.

(2) Where an equality of votes is found to exist between any candidates, and the addition of a vote will entitle any one of the candidates to be declared elected, the determination of the person to whom such one additional vote shall be deemed to have been given shall be made by lot to be drawn in the presence of the Returning Officer and in such manner as he may determine.

17. Upon the completion of the counting and after the result has been declared by him, the Returning Officer shall seal up the voting papers and all other documents relating to the election, and shall retain the same for a period of six months, and shall thereafter cause them to be destroyed unless otherwise directed by an order of competent authority.

Publication of result.

18. The Returning Officer shall without delay report the result of the election to the Local Administration and the name of the candidate elected shall be published in the local official Gazette.

Appointment of dates, times and places.

19. The Local Administration shall appoint, and shall notify, in such manner as it thinks fit, such date, and, if necessary, such time and place as it may think suitable for each of the following proceedings, namely :—

(*a*) the publication of the electoral roll under rule 4 ;

(*b*) the attestation of nomination papers under rule 7 ;

(*c*) the scrutiny of nomination papers under rule 10 ;

(*d*) the attestation of voting papers under rule 12 ; and

(*e*) the counting of votes under rule 15.

FORM I.

(See rule 4.)

ELECTORAL ROLL OF MEMBERS OF MUNICIPAL COMMITTEES IN BERAR.

Serial No.	Name of Municipal Committee.	Name of elector.	Father's name.	Address.	Qualifications.
1	2	3	4	5	6
1					
2					
3					

FORM II.

(*See rule 7.*)

NOMINATION PAPER

1. Name of candidate.

2. Father's name.

3. Age.

4. Address.

5. Place of Residence.

6. Signature of proposer.

7. Signature of seconder.

Signed in my presence by and who are personally known to me (*or* who have been identified to my satisfaction) as being the persons whose names appear as and on the electoral roll of members of Municipal Committees in Berar.

Attesting Officer.

Instructions.

1. Nomination papers shall be attested by an Attesting Officer. Those not so attested shall be invalid.

2. They shall be presented for attestation on the day of and between the hours of and at the office of

FORM III.

See rule 12.)

VOTING PAPER.

One person is to be elected by the electors of the Berar Municipal Committees with a view to his being nominated to the Legislative Council of the Chief Commissioner of the Central Provinces. The following [ ] candidates have been duly nominated :—

Serial No.	Names of candidates.	Vote.

Instructions.

1. Each elector has one vote.

2. He shall vote by placing, or causing to be placed, the mark × opposite the name of the candidate whom he prefers.

3. The voting paper shall be invalid if the mark × is placed opposite the name of more than one candidate, or if it is so placed as to render it doubtful to which candidate such mark is intended to apply.

4. Before his vote is marked the elector shall sign the declaration on the back of the paper in the presence of the Attesting Officer, who shall attest his signature. Without such attestation the voting paper shall be invalid.

5. Voting papers shall be presented for attestation and marked and delivered to the Attesting Officer enclosed in the envelope to be supplied to him for the purpose between the hours of and on the day of 19 .

I hereby declare that I am the person whose name appears as [ ] No. on the electoral roll of members of Municipal Committees in Berar.

C. N.,

Elector.

(*Fold on this line.*)

Signed in my presence by the elector who is personally known to me (*or* who has been identified to my satisfaction).

X. Y.,

Attesting Officer.

FORM IV.

(See rule 13.)

LIST OF ELECTORS WHOSE VOTING PAPERS HAVE BEEN ATTESTED BY

The following is a list of all the electors whose voting papers have been attested by me :—

Serial No.	Name of Elector.	Address.

Attesting Officer.

SCHEDULE II.

[*See Regulation II, sub-head (ii) and Regulation II* (2).]

RULES FOR ELECTION BY THE DISTRICT BOARDS IN BERAR.

Preliminary.

1. (1) "Attesting Officer" means such officer as the Local Administration may, by notification in the local official Gazette, appoint to perform all or any of the duties of the Attesting Officer under these rules, and includes any officer deputed for the time being by the Attesting Officer to perform his duties.

(2) "Returning Officer" means such officer as the Local Administration may, by notification in the local official Gazette, appoint to perform all or any of the duties of the Returning Officer under these rules, and includes any officer deputed for the time being by the Returning Officer to perform his duties.

2. The person specified in Regulation II, sub-head (*ii*), shall be elected by the members qualified to vote other than those appointed *ex-officio*, (hereinafter referred to as 'electors') of the District Boards of Berar.

Electoral roll.

3. (1) On or before such date as may be appointed by the Local Administration in this behalf an electoral roll in Form I annexed to this Schedule shall be published by the Returning Officer in the local official Gazette.

(2) As soon as may be after the publication of the roll in the said Gazette, a copy thereof shall be posted in a conspicuous place at the office of every Deputy Commissioner.

4. The electoral roll shall be conclusive evidence for the purpose of determining whether any person is an elector or not under these rules.

Revision of electoral roll.

5. (1) The electoral roll published under rule 3 shall be subject to revision from time to time as the Local Administration may, by notification in the local official Gazette, direct.

(2) At the time so notified the Deputy Commissioner may of his own motion, and shall, on the application of any person whose name appears on the said roll or who claims to have his name inserted therein, revise the said roll so far as it relates to his district.

(3) On such revision the Deputy Commissioner, after such enquiry and hearing such persons as may be necessary, may order any addition to or alteration in the said roll.

(4) An appeal shall lie from any such order of the Deputy Commissioner to the Commissioner of Berar, whose decision shall be final.

(5) Such appeal, if any, shall be preferred within one week from the date of the order appealed against:

Provided that the Commissioner may, for sufficient reason, extend the time to a period not exceeding three weeks.

(6) As soon as may be after the expiry of the period for appealing or, if an appeal is preferred, after the appeal has been disposed of, the electoral roll, as added to or altered on such revision, shall be published and posted as provided in rule 3.

Qualifications and nomination of candidates. —

6. (1) Any person not ineligible for election under these Regulations and having a place of residence in Berar may be nominated as a candidate for election if he is, or has during the decade expiring on the date of the election for any period aggregating three years been, a member of a District Board in Berar.

(2) Such nomination shall be made by means of a nomination paper in Form II annexed to this Schedule, which shall be supplied by the Attesting Officer to any elector asking for the same.

(3) Every nomination paper shall be subscribed by two such electors as proposer and seconder:

Provided that no elector shall subscribe more than one nomination paper.

(4) Every nomination paper shall be presented for attestation on the date and at the time and place appointed by the Local Administration in this behalf, and, if the Attesting Officer is satisfied that the nominee is willing to stand for election, shall be attested by the Attesting Officer in the manner prescribed on the face of the Form and without delay despatched by registered post to the Returning Officer.

7. Nomination papers which are not received by the Returning Officer before the date and time appointed for the scrutiny of nomination papers shall be rejected.

8. (1) A candidate who has been duly nominated for election may withdraw his candidature by a written and signed communication delivered to the Returning Officer not less than fourteen clear days before the date fixed for the attestation of voting papers or if the period between the dates fixed for the scrutiny of nomination papers and the attestation of voting papers is less than fourteen clear days, not later than the date fixed for such scrutiny.

(2) The Returning Officer shall forthwith notify the withdrawal of any candidate in such manner as the Local Administration may prescribe, and shall communicate the withdrawal to the Attesting Officer, who shall thereupon remove from the voting paper the name of the candidate who has withdrawn his candidature.

(3) A candidate who has withdrawn his candidature shall not be allowed to cancel the withdrawal or to stand as a candidate for the same election.

Scrutiny of nomination papers.

9. (1) On the date and at the time appointed by the Local Administration for the scrutiny of nomination papers, every candidate and his proposer and seconder may attend at the place appointed, and the Returning Officer shall allow them to examine the nomination papers of all candidates which have been received by him as aforesaid.

(2) Where an elector subscribes two or more nomination papers all such nomination papers except the one first received by the Attesting Officer shall be deemed to be invalid and, if the Returning Officer is unable to determine which of such nomination papers was so received first, both or all of such papers shall be deemed to be invalid.

(3) The Returning Officer shall examine the nomination papers and shall decide all objections which may be made to any nomination paper on the ground that it is not valid under these rules, and may reject, either of his own motion or on such objection, any nomination paper on such ground; the decision of the Returning Officer shall in every case be endorsed by him on the nomination paper in respect of which such decision is given and shall be final save as provided in Regulations VI and XII.

Voting.

10. (1) If one duly nominated candidate only stands for election, the Returning Officer shall forthwith declare such candidate to be elected.

(2) If more duly nominated candidates than one stand for election, the Returning Officer shall forthwith publish their names in such manner as the Local Administration may prescribe.

11. (1) On such date and at such time as may be appointed by the Local Administration in this behalf, every elector desirous of recording his vote shall attend for the purpose at the office of the Attesting Officer.

(2) The Attesting Officer shall deliver to each elector a voting paper in Form III annexed to this Schedule, in which shall be entered the names of the candidates, together with an envelope for enclosing the same.

(3) The elector shall sign the declaration on the back of the paper in the presence of the Attesting Officer in accordance with the instructions on the face thereof, and the Attesting Officer shall attest his signature in the manner prescribed by the same instructions.

(4) The elector shall then proceed to a place screened from observation which shall be provided by the Attesting Officer, and there mark his vote on the voting paper in accordance with the instructions on the face thereof.

(5) The elector shall then place the voting paper in the envelope provided, and after closing the envelope shall deliver it to the Attesting Officer.

(6) Neglect on the part of the elector to comply with any of these instructions shall render his vote invalid.

(7) If an elector is unable to read or write, or is by reason of blindness or other physical defect incapacitated from recording his vote as required by the foregoing provisions of this rule, the Attesting Officer shall assist him in such manner as may be necessary to mark the voting paper and sign the declaration on the back thereof.

12. (1) The Attesting Officer shall, at the close of the day appointed for the attestation of voting papers, despatch all the envelopes so delivered to him to the Returning Officer by registered post in a packet securely sealed with his official seal.

(2) On the day following, the Attesting Officer shall also despatch to the Returning Officer by registered post a list in Form IV annexed to this Schedule of the electors whose voting papers he has attested.

Counting of votes and declaration of result.

13. (1) On receiving the voting papers the Returning Officer shall examine them to see whether they have been correctly filled up.

(2) Where an elector records his vote on two or more voting papers all such voting papers except the one first received by the Attesting Officer shall be deemed to be invalid and, if the Returning Officer is unable to determine which of such papers was so received first, both or all of such papers shall be deemed to be invalid.

(3) The Returning Officer shall endorse "rejected" with the grounds for such rejection on any voting paper which he may reject on the ground that it is invalid under these rules and, save as provided in rule 14 (4) or in Regulation XII, such rejection shall be final.

(4) The Returning Officer shall then fold the lower portion of every paper, whether valid or invalid, along the dotted line on the back, so as to conceal the names of the elector and the Attesting Officer, and shall seal down the portion thus folded with his official seal.

14. (1) The Returning Officer shall attend for the purpose of counting the votes on such date and at such time and place as may be appointed by the Local Administration in this behalf.

(2) Every candidate may be present in person, or may send a representative, duly authorised by him in writing, to watch the process of counting.

(3) The Returning Officer shall show the voting papers sealed as provided by rule 13 to the candidates or their representatives.

(4) If an objection is made to any voting paper on the ground that it is invalid under these rules, or to the rejection by the Returning Officer of any voting paper, it shall be decided at once by the Returning Officer, whose decision shall be final, save as provided in Regulations VI and XII.

(5) In such cases the Returning Officer shall record on the voting paper the nature of the objection and his decision thereon.

15. (1) When the counting of the votes has been completed, the Returning Officer shall forthwith declare the candidate to whom the largest number of votes has been given to be elected.

(2) Where an equality of votes is found to exist between any candidates and the addition of a vote will entitle any one of the candidates to be declared elected, the determination of the person to whom such one additional vote shall be deemed to have been given shall be made by lot, to be drawn in the presence of the Returning Officer and in such manner as he may determine.

16. Upon the completion of the counting and after the result has been declared by him, the Returning Officer shall seal up the voting papers and all other documents relating to the election, and shall retain the same for a period of six months and shall thereafter cause them to be destroyed unless otherwise directed by an order of competent authority.

Publication of result.

17. The Returning Officer shall without delay report the result of the election to the Local Administration and the name of the candidate elected shall be published in the local official Gazette.

Appointment of dates, times and places.

18. The Local Administration shall appoint and notify, in such manner as it thinks fit, such date, and if necessary, such time and place, as it may think suitable for each of the following proceedings, namely :—

(*a*) the publication of the electoral roll under rule 3;

(*b*) the attestation of nomination papers under rule 6;

(*c*) the scrutiny of nomination papers under rule 9;

(*d*) the attestation of voting papers under rule 11; and

(*e*) the counting of votes under rule 14.

FORM I.

(See rule 3.)

ELECTORAL ROLL OF MEMBERS OF DISTRICT BOARDS IN BERAR.

Serial No.	Name of District Board.	Name of elector.	Father's name.	Address.	Qualifications.
1	2	3	4	5	6
1					
2					
3					

FORM II.

(See rule 6.)

NOMINATION PAPER.

1. Name of candidate.

2. Father's name.

3. Age.

4. Address.

5. Place of residence.

6. Signature of proposer.

7. Signature of seconder.

Signed in my presence by and who are personally known to me (*or* who have been identified to my satisfaction) as being the persons whose names appear as and on the electoral roll of members of District Boards in Berar.

Attesting Officer.

Instructions.

1. Nomination papers shall be attested by an Attesting Officer. Those not so attested shall be invalid.

2. They shall be presented for attestation on the day of and between the hours of and at the office of .

FORM III.

(*See rule 11.*)

VOTING PAPER.

One person is to be elected by the electors of the District Boards of Berar with a view to his being nominated to the Legislative Council of the Chief Commissioner of the Central Provinces. The following [ ] candidates have been duly nominated :—

Serial No.	Names of candidates.	Vote.

Instructions.

1. Each elector has one vote.

2. He shall vote by placing, or causing to be placed, the mark × opposite the name of the candidate whom he prefers.

3. The voting paper shall be invalid if the mark × is placed opposite the name of more than one candidate, or if it is so placed as to render it doubtful to which candidate such mark is intended to apply.

4. Before his vote is marked the elector shall sign the declaration on the back of the paper in the presence of the Attesting Officer, who shall attest his signature. Without such attestation the voting paper shall be invalid.

5. Voting papers shall be presented for attestation and marked and delivered to the Attesting Officer enclosed in the envelope to be supplied to him for the purpose between the hours of and on the day of 19 .

I hereby declare that I am the person whose name appears as [ ] No. . on the electoral roll of members of District Boards in Berar.

C. N.,

Elector.

(*Fold on this line.*)

Signed in my presence by the elector who is personally known to me (*or* who has been identified to my satisfaction).

X. Y.,

Attesting Officer.

FORM IV.

(*See rule 12.*)

LIST OF ELECTORS WHOSE VOTING PAPERS HAVE BEEN ATTESTED BY

The following is a list of all the electors whose voting papers have been attested by me :—

Serial No.	Name of Elector.	Address.

Attesting Officer.

SCHEDULE III.

[*See Regulation II, sub-head (iii), and Regulation II* (2).]

RULES FOR ELECTION BY LANDHOLDERS IN BERAR.

Preliminary.

1. (1) " Attesting Officer " means such officer as the Local Administration may, by notification in the local official Gazette, appoint to perform all or any of the duties of the Attesting Officer uuder these rules, and includes any officer deputed for the time being by the Attesting Officer to perform his duties.

(2) "Returning Officer " means such officer as the Local Administration may, by notification in the local official Gazette, appoint to perform all or any of the duties of the Returning Officer under these rules, and includes any officer deputed for the time being by the Returning Officer to perform his duties.

2. The persons specified in Regulation II, sub-head (*iii*), shall be elected by the landholders of Berar.

Qualifications of Electors.

3. (1) The election shall be made by all persons qualified to vote, having a place of residence in Berar, and holding land therein in other than tenancy right—

(*a*) whose land is assessed to land revenue at not less than Rs. 1,000 ; or

(*b*) whose names are entered in the Durbar list prepared under the authority of the Chief Commissioner of the Central Provinces ; or

(*c*) who hold the office of Honorary Magistrate :

Provided that no person shall have more than one vote though he may possess more than one of the qualifications above described.

(2) In the case of Hindu joint-family qualified under the last sub-section the name of the manager of the family, or of any member of the family whom the manager may appoint in writing in this behalf, shall be entered in the roll as the representative, for the purpose of the roll, of such family.

(3) In determining the eligibility of a landholder as an elector, only land revenue assessed on such land or share in land as he may hold in his own personal right and not in a fiduciary capacity shall be taken into account. Any portion of his estate which is revenue free, either wholly or in part, shall be taken as supporting the land revenue to which it would be assessed but for the fact that it is revenue free, either wholly or in part.

(4) If the amount paid by the landholder in respect of any such share of an estate is not definitely known the Deputy Commissioner of the district in which such estate is situated shall estimate the amount so paid in respect of such share and his decision shall be final.

Electoral roll.

4. (1) On or before such date as may be appointed by the Local Administration in this behalf, an electoral roll of landholders qualified under rule 3, hereinafter referred to as electors, in Form I annexed to this Schedule shall be published by the Returning Officer in the local official Gazette.

(2) As soon as may be after the publication of the roll in the local official Gazette, a copy thereof shall be posted in a conspicuous place at the office of every Deputy Commissioner.

5. The electoral roll shall be conclusive evidence for the purpose of determining whether any person is an elector or not under these rules.

Revision of Electoral Roll.

6. (1) The electoral roll published under rule 4 shall be subject to revision from time to time as the Local Administration may, by notification in the local official Gazette, direct.

(2) At the time so notified the Deputy Commissioner may of his own motion, and shall, on the application of any person whose name appears on the said roll or who claims to have his name inserted therein, revise the said roll so far as it relates to his district.

(3) On such revision the Deputy Commissioner, after such enquiry and after hearing such persons as may be necessary, may order any addition to or alteration in the said roll.

(4) An appeal shall lie from any such order of the Deputy Commissioner to the Commissioner of Berar, whose decision shall be final.

(5) Such appeal, if any, shall be preferred within one week from the date of the order appealed against:

Provided that the Commissioner may, for sufficient reason, extend the time to a period not exceeding three weeks.

(6) As soon as may be after the expiry of the period for appealing or, if an appeal is preferred, after the appeal has been disposed of, the electoral roll, as added to or altered on such revision, shall be published and posted as provided in rule 4.

Qualifications and Nomination of Candidates.

7. (1) Any person not ineligible for election under these Regulations, whose name is on the electoral roll, may be nominated as a candidate for election.

(2) Such nomination shall be made by means of a nomination paper in Form II annexed to this Schedule, which shall be supplied by the Attesting Officer to any elector asking for the same.

(3) Every nomination paper shall be subscribed by two such electors as proposer and seconder:

Provided that no elector shall subscribe more than one nomination paper.

(4) Every nomination paper shall be presented for attestation on the date and at the time and place appointed by the Local Administration in this behalf, and, if the Attesting Officer is satisfied that the nominee is willing to stand for election, shall be attested by the Attesting Officer in the manner prescribed on the face of the Form and without delay despatched by registered post to the Returning Officer.

8. Nomination papers which are not received by the Returning Officer before the date and time appointed for the scrutiny of nomination papers shall be rejected.

9. (1) A candidate who has been duly nominated for election may withdraw his candidature by a written and signed communication delivered to the Returning Officer not less than fourteen clear days before the date fixed for the attestation of voting papers or, if the period between the dates fixed for the scrutiny of nomination papers and the attestation of voting papers is less than fourteen clear days, not later than the date fixed for such scrutiny.

(2) The Returning Officer shall forthwith notify the withdrawal of any candidate in such manner as the Local Administration may prescribe, and shall communicate the withdrawal to the Attesting Officer, who shall thereupon remove from the voting paper the name of the candidate who has withdrawn his candidature.

(3) A candidate who has withdrawn his candidature shall not be allowed to cancel the withdrawal or to stand as a candidate for the same election.

Scrutiny of nomination papers.

10. (1) On the date and at the time appointed by the Local Administration for the scrutiny of nomination papers, every candidate and his proposer and seconder may attend at the place appointed, and the Returning Officer shall allow them to examine the nomination papers of all candidates which have been received by him as aforesaid.

(2) Where an elector subscribes two or more nomination papers all such nomination papers except the one first received by the Attesting Officer shall be deemed to be invalid and, if the Returning Officer is unable to determine which of such nomination papers was so received first, both or all of such papers shall be deemed to be invalid.

(3) The Returning Officer shall examine the nomination papers and shall decide all objections which may be made to any nomination paper on the ground that it is not valid under these rules, and may reject, either of his own motion or on such objection, any nomination paper on such ground; the decision of the Returning Officer shall in every case be endorsed by him on the nomination paper in respect of which such decision is given and shall be final save as provided in Regulations VI and XII.

Voting.

11. (1) If one duly nominated candidate only stands for election, the Returning Officer shall forthwith declare such candidate to be elected.

(2) If more duly nominated candidates than one stand for election the Returning Officer shall forthwith publish their names in such manner as the Local Administration may prescribe.

12. (1) On such date and at such time as may be appointed by the Local Administration in this behalf, every elector desirous of recording his vote shall attend for the purpose at the office of Attesting Officer.

(2) The Attesting Officer shall deliver to each elector a voting paper in Form III annexed to this Schedule, in which shall be entered the names of the candidates, together with an envelope for enclosing the same.

(3) The elector shall sign the declaration on the back of the paper in the presence of the Attesting Officer in accordance with the instructions on the face thereof, and the Attesting Officer shall attest his signature in the manner prescribed by the same instructions.

(4) The elector shall then proceed to a place screened from observation, which shall be provided by the Attesting Officer, and there mark his vote on the voting paper in accordance with the instructions on the face thereof.

(5) The elector shall then place the voting paper in the envelope provided, and after closing the envelope shall deliver it to the Attesting Officer.

(6) Neglect on the part of the elector to comply with any of these instructions shall render his vote invalid.

(7) If an elector is unable to read or write, or is by reason of blindness or other physical defect incapacitated from recording his vote as required by the foregoing provisions of this rule, the Attesting Officer shall assist him in such manner as may be necessary to mark the voting paper and sign the declaration on the back thereof.

13. (1) The Attesting Officer shall, at the close of the day appointed for the attestation of voting papers, despatch all the envelopes so delivered to him to the Returning Officer by registered post in a packet securely sealed with his official seal.

(2) On the day following, the Attesting Officer shall also despatch to the Returning Officer by registered post a list in Form IV annexed to the Schedule of the electors whose voting papers he has attested.

Counting of Votes and declaration of Result.

14. (1) On receiving the voting papers the Returning Officer shall examine them to see whether they have been correctly filled up.

(2) Where an elector records his vote on two or more voting papers, all such voting papers except the one first received by the Attesting Officer shall be deemed to be invaild, and, if the Returning Officer is unable to determine which of such papers was so received first, both or all of such papers shall be deemed to be invalid.

(3) The Returning Officer shall endorse "rejected" with the grounds for such rejection on any voting paper which he may reject on the ground that it is invalid under these rules, and save as provided in rule 15 (4) or in Regulation XII such rejection shall be final.

(4) The Returning Officer shall then fold the lower portion of every paper, whether valid or invalid, along the dotted line on the back, so as to conceal the names of the elector and the Attesting Officer, and shall seal down the portion thus folded with his official seal.

15. (1) The Returning Officer shall attend for the purpose of counting the votes on such date and at such time and place as may be appointed by the Local Administration in this behalf.

(2) Every candidate may be present in person, or may send a representative, duly authorised by him in writing, to watch the process of counting.

(3) The Returning Officer shall show the voting papers sealed as provided by rule 14 to the candidates or their representatives.

(4) If any objection is made to any voting paper on the ground that it is invalid under these rules or to the rejection by the Returning Officer of any voting paper, it shall be decided at once by the Returning Officer, whose decision shall be final, save as provided in Regulations VI and XII.

(5) In such cases the Returning Officer shall record on the voting paper the nature of the objection and his decision thereon.

16. (1) When the counting of the votes has been completed, the Returning Officer shall forthwith declare the candidate to whom the largest number of votes has been given to be elected.

(2) Where an equality of votes is found to exist between any candidates and the addition of a vote will entitle any one of the candidates to be declared elected, the determination of the person to whom such one additional vote shall be deemed to have been given shall be made by lot to be drawn in the presence of the Returning Officer and in such manner as he may determine.

17. Upon the completion of the counting and after the result has been declared by him, the Returning Officer shall seal up the voting papers and all other documents relating to the election, and shall retain the same for the period of six months, and shall thereafter cause them to be destroyed unless otherwise directed by an order of competent authority.

Publication of Result.

18. The Returning Officer shall without delay report the result of the election to the Local Administration and the name of the candidate elected shall be published in the local official Gazette.

Appointment of dates, times and places.

19. The Local Administration shall appoint and notify, in such manner as it thinks fit, such date, and if necessary, such time and place, as it may think suitable for each of the following proceedings, namely :—

(*a*) the publication of the electoral roll under rule 4 ;

(*b*) the attestation of nomination papers under rule 7 ;

(*c*) the scrutiny of nomination papers under rule 10 ;

(*d*) the attestation of voting papers under rule 12 ; and

(*e*) the counting of votes under rule 15.

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FORM I.

(See rule 4.)

ELECTORAL ROLL OF LANDHOLDERS IN BERAR.

Serial Number on roll.	Serial number on District list.	Name of elector.	Father's name.	Address.	Qualifications.
1	2	3	4	5	6

Instructions.

1. The roll shall be prepared by districts, each elector's name being entered under the district in which he resides.

2. In the case of an elector qualified under rule 3 (1) (*a*) who pays land revenue, or holds land free of revenue in more than one district, details of the land revenue payable or nominally assessed in each district shall be entered in column 6, where the land revenue payable or nominally assessed in any one district does not exceed Rs. 1,000.

3. In determining the eligibility of a landholder as an elector only land revenue payable on account of such land or share in land as he may hold in his own personal right and not in a fiduciary capacity shall be taken into account. Any portion of his estate which is revenue free, either wholly or in part, shall be taken as supporting the land revenue to which it would be assessed but for the fact that it is revenue free, either wholly or in part.

FORM II.

(See rule 7.)

NOMINATION PAPER.

1. Name of candidate.
2. Father's name.
3. Age.
4. Address.
5. Place of residence.
6. Signature of proposer.
7. Signature of seconder.

Signed in my presence by and who are personally known to me (*or* who have been identified to my satisfaction) as being the persons whose names appear as and on the electoral roll of landholders in Berar.

Attesting Officer.

Instructions.

1. Nomination papers shall be attested by an Attesting Officer. Those not so attested shall be invalid.

2. They shall be presented for attestation on the day of and between the hours of and at the office of .

FORM III.

(*See rule 12.*)

VOTING PAPER.

One person is to be elected by the landholders of Berar, with a view to his being nominated to the Legislative Council of the Chief Commissioner of the Central Provinces. The following candidates have been duly nominated :—

Serial No.	Names of candidates.	Vote.

Instructions.

1. Each elector has one vote.

2. He shall vote by placing, or causing to be placed, the mark × opposite the name of the candidate whom he prefers.

3. The voting paper shall be invalid if the mark × is placed opposite the name of more than one candidate, or if it is so placed as to render it doubtful to which candidate such mark is intended to apply.

4. Before his vote is marked the elector shall sign the declaration on the back of the paper in the presence of the Attesting Officer, who shall attest his signature. Without such attestation the voting paper shall be invalid.

5. Voting papers shall be presented for attestation and marked and delivered to the Attesting Officer enclosed in the envelope to be supplied to him for the purpose between the hours of and on the day of

I hereby declare that I am the person whose name appears as [ ] No. on the electoral roll of landholders in Berar.

C. N.,

Elector.

(*Fold on this line.*)

Signed in my presence by the elector who is personally known to me (*or* who has been identified to my satisfaction).

X. Y.,

Attesting Officer.

FORM IV.

(See rule 13.)

LIST OF ELECTORS WHOSE VOTING PAPERS HAVE BEEN ATTESTED BY

The following is a list of all the electors whose voting papers have been attested by me :—

Serial No.	Name of Elector.	Address.

Attesting Officer.

831HD—1,500—21-3-14—GCBP Simla

Enclosure No. 3.

Notification No. 2370, dated the 8th November 1913.

The following Proclamation of the Governor General in Council is hereby published :—

PROCLAMATION.

In exercise of the power conferred by section 3 of the Government of India Act, 1912 (2 & 3 Geo. 5, c. 6), the Governor General in Council is pleased to extend to the territories for the time being administered by the Chief Commissioner of the Central Provinces the provisions of the Indian Councils Acts, 1861 to 1909, touching the making of laws and regulations for the peace and good government of provinces under Lieutenant-Governors (including the constitution of Legislative Councils for such provinces and the business to be transacted therein) subject to the modification that in the application to the said territories of the provisions aforesaid references to a Lieutenant-Governor shall be construed as references to the Chief Commissioner of the Central Provinces.

Notification No. 2371, dated the 8th November 1913.

The following Proclamation, to which the sanction of His Majesty the King, Emperor of India, has been signified by the Secretary of State for India in Council, is hereby published :—

PROCLAMATION.

In exercise of the powers conferred by the Indian Councils Act, 1861 (24 & 25 Vict., c. 67) and all other powers enabling him in this behalf, the Governor General is pleased to constitute the territories for the time being administered by the Chief Commissioner of the Central Provinces to be, for the purposes of the Indian Councils Act, 1861, a province to which the provisions of that Act touching the making of laws and regulations for the peace and good government of the Presidencies of Fort Saint George and Bombay shall be applicable.

2. The Governor General in Council is also pleased to specify the 10th day of November 1913, as the time at which the application of the said provisions of the Indian Councils Act, 1861, to the said territories shall take effect.

831HD—1,500—19-3-14—GCBP Simla

Enclosure no. 4.

LEGISLATIVE DEPARTMENT.

NOTIFICATION.

Delhi, the 24th January 1914.

No. 3.—In exercise of the power conferred by section 6 of the Indian Councils Act, 1909 (9 Edw. 7, c 4), the Governor General in Council has, with the approval of the Secretary of State for India in Council, made the following amendments in the Regulations for the nomination and election of additional Members of the Legislative Council of the Governor General, published under Legislative Department Notification no. 61, dated the 14th of November, 1912:—

In Regulation VIII, sub-section (*1*), of the said Regulations, the following shall be inserted after clause (*b*), namely:—

> "or (*c*) is elected or nominated, who is or subsequently becomes a Member of the Legislative Council of any Province and fails to resign his office as Member of such Provincial Council, within seven days of the date on which he is Member of both Councils,"

and to the same sub-section the following proviso shall be added, namely:—

> "Provided that nothing in clause (*c*) shall apply to any election or nomination already made of any Additional Member of the Legislative Council of the Governor General, who is, on the 24th day of January 1914, also a Member of the Legislative Council of any Province."

W. H. VINCENT,
Secretary to the Government of India.

Enclosure no. 5 (*i*).

Rules for the Discussion of the Annual Financial Statement.

NOTIFICATION.

Nagpur, the *1914.*

No. .—In exercise of the powers conferred by Section 5 of the Indian Councils Act, 1909, and with the sanction of the Governor General in Council, the Chief Commissioner is pleased to make the following rules authorising, at any meeting of the Central Provinces Legislative Council, the discussion of the Annual Financial Statement of the Central Provinces and Berar:—

Definitions.

1. In these rules—

(1) "Finance Committee" means the Committee of the Council appointed under Rules 2 and 3 to consider and revise the Draft Financial Statement;

Finance Committee.

President.

(2) "President" means—

(*a*) the Chief Commissioner, or

(*b*) the Vice-President appointed by the Chief Commissioner under Section 4 of the Indian Councils Act, 1909, or

(*c*) the Member appointed to preside under Rule 36;

(3) "Finance Member" means the Member of the Council appointed by the Chief Commissioner to perform the functions of the Finance Member under these rules;

Finance Member.

(4) "Member in charge;" with regard to any subject under discussion, means the Member of the Council appointed by the Chief Commissioner to perform the functions of the Member in charge under these rules in respect of the business of the Department of the Local Government to which the subject under discussion belongs, and includes any Member to whom such Member in charge may delegate any function assigned to him under these rules;

Member in Charge.

Draft Financial Statement.

(5) "Draft Financial Statement" means the preliminary financial proposals of the Chief Commissioner for the financial year next following;

(6) "Revised financial statement" means the Draft Financial Statement as revised by the Local Government with the approval of the Government of India after considering the proposals of the Finance Committee;

Revised Financial Statement.

(7) "Budget" means the financial Statement as finally sanctioned by the Government of India, after amendment with reference to resolutions passed in Council and accepted by the Local Government or to any special circumstances not previously foreseen; and

Budget.

(8) "Secretary" means the Secretary to the Legislative Council, and includes every person for the time being exercising the functions of the Secretary.

Secretary.

The Draft Financial Statement.

2. *Appointment of Finance Committee.*—On a day not later than the 5th day of January in every financial year, the Chief Commissioner shall appoint a

Finance Committee for the purpose of [redacted] draft Financial Statement and making proposals with reference thereto [redacted] consideration of the Local Government.

3. (1) *Constitution of Finance Committee.*—The Finance Committee shall consist of not more than eight Members, of whom not more than half shall be nominated by the Chief Commissioner.

(2) The remaining Members of the Committee shall be elected by the non-official Members of Council by votes given under such procedure as the Chief Commissioner may, from time to time, prescribe by notification in the local official Gazette.

4. *Finance Member to be Chairman.*—The Finance Member shall be the Chairman of the Committee and in the case of an equality of votes on any matter shall have a second or casting vote.

5. *Draft Financial Statement.*—(1) On a day not later than the 18th day of January in every financial year, the Local Government shall refer to the Finance Committee the Draft Financial Statement.

(2) The draft shall comprise tabular statements showing :—

(*a*) the opening balance of the Provincial account;

(*b*) the estimated Provincial revenue under the various major-heads of account;

(*c*) the estimated Provincial expenditure, under specific major-heads, on existing establishments and schemes, and on new schemes the cost of which is not considerable, or which the Local Government considers to be of an absolutely obligatory character;

(*d*) the amounts available for maximum recurring expenditure and for total expenditure upon other new schemes, the latter being provisionally included under a head "Unallotted expenditure"; and

(*e*) the estimated closing balance.

(3) There shall be appended to the Draft Financial Statement a memorandum, indicating, as fully as possible, the manner in which the Local Government provisionally proposes to allot the sum available for total expenditure on new schemes referred to in clause (*d*) of Sub-rule (*2*), and also indicating, if though desirable, alternative methods of distributing this expenditure.

In respect of each suggestion thus made, the maximum recurring expenditure and the total expenditure, (*a*) recurring and (*b*) non-recurring, which it is proposed to incur in the next financial year, shall be separately stated.

6. *Finance Committee to consider provision under "Unallotted expenditure".*—(1) The Finance Committee shall consider how the provision made under the head "Unallotted expenditure" referred to in Rule 5, Sub-rule (*2*), clause (*d*), shall be distributed among the specific major-heads, and to what purposes the sums thus allotted should be applied :

Provided that—

(*i*) the total provision for recurring and non-recurring expenditure on the new schemes shall not exceed the amount entered in the Draft Financial Statement as available for these purposes; and

(*ii*) the limit of recurring expenditure shall be determined with reference to the maximum amount which a scheme will eventually involve, any difference between this figure and the recurring expenditure required to be provided in the Draft Financial Statement under discussion being made up by addition to non-recurring expenditure.

Finance Committee to consider estimates of Revenue and Expenditure.—(2) It shall also consider the estimates of revenue and expenditure referred to in Rule 5, Sub-rule (*2*), clauses (*b*) and (*c*), and recommend such amendments in them as seem to it to be advisable so long as these do not materially affect heads of revenue and expenditure which the Local Government shares with the Government of India :

Provided that any recommendation likely to reduce the estimated closing balance referred to in Rule 5, Sub-rule (*2*), clause (*e*), shall be accompanied by proposals for a counterbalancing increase in revenue or reduction in expenditure referred to in Rule 5, Sub-rule (*2*), clause (*c*) or (*d*).

Such proposals should indicate the precise item or items in the Budget which should be increased or reduced.

7. (1) *Proceedings of Committee to be private.*—The proceedings of the Committee shall be private and informal.

(2) *When to begin.*—They shall begin not later than the 20th day of January, and shall be completed not later than the 27th day of the same month.

(3) *Chairman may close discussion.*—Free discussion shall be allowed, but the Chairman may at his discretion close discussion upon any particular item when he thinks that it cannot be continued with advantage.

(4) *Voting.*—When the question of making any particular provision in the estimates coming within the scope of the Committee's functions is in dispute, the Member in charge shall be heard in its support, and the Committee shall then proceed to vote, the decision being by a majority of votes.

8. The Finance Committee shall submit to the Local Government, not later than the 28th day of January, a report indicating the changes which it recommends in the Draft Financial Statement.

9. After considering the proposals of the Committee, the Local Government shall embody its own conclusions in the Draft Financial Statement, and shall refer the Statement thus amended to the Government of India.

The Revised Financial Statement.

10. *Presentation of Revised Financial Statement.*—(1) The Revised Financial Statement shall be presented to the Council on a day not later than the 13th day of March.

(2) *Form of Revised Financial Statement.*—It shall comprise a memorandum by the Finance Member explaining the general financial situation of the Province in the current and ensuing years, together with memoranda explaining the estimates of revenue and expenditure under the various major heads, or groups of major heads.

(3) *Circulation of provisionally amended Draft Financial Statement.*—A week before the Revised Financial Statement is presented to the Council, copies of the amended Draft Financial Statement, as provisionally approved by the Government of India at the time, shall be supplied to the Members with a note that the figures and remarks contained in it are liable to alteration.

(4) *Circulation of Revised Financial Statement and memorandum.*—Copies of the Revised Financial Statement, together with copies of a memorandum detailing the alterations made in the Statement of which copies have been previously supplied under Sub-rule (3), shall be supplied to the Members not later than the day preceding that on which the Statement is presented to the Council.

11. (1) *Consideration of each head or group of heads in Statement.*—On the day when the Revised Financial Statement is presented to the Council, each head or group of heads in the Statement, which is specified in the schedule appended to these rules as being open to discussion, shall be considered separately according to such grouping as the Member in charge may determine.

(2) The consideration of each such head or group of heads shall be introduced by the Member in charge with such explanations supplementing the information contained in the Revised Financial Statement, as may appear to him to be necessary.

(3) Any Member shall then be at liberty to move any resolution relating to any question covered by any such head or group of heads which may be entered in his name in the List of Business, and the Council shall thereupon proceed to discuss every such resolution in the manner hereinafter prescribed.

12. *Subjects not to be discussed.*—No discussion shall be permitted in regard to any of the following subjects, namely :—

(*a*) any subject removed from the cognizance of the Legislative Council of the Chief Commissioner by Section 43 of the Indian Councils Act of 1861; or

(*b*) any matter affecting the relations of His Majesty's Government or of the Governor General in Council, or of the Chief Commissioner with any Foreign State or any Native State in India, or relating to the internal affairs of any such Native State; or

(*c*) except with the sanction of the Chief Commissioner, any matter which is the subject of discussion between the Governor General in Council and the local Government; or

(*d*) any matter under adjudication by a Court of Law having jurisdiction in any part of His Majesty's dominions.

13. *Resolution to comply with certain conditions.*—No resolution shall be moved which does not comply with the following conditions, namely :—

(*a*) it shall be in the form of a specific recommendation addressed to the Chief Commissioner;

(*b*) it shall be clearly and precisely expressed, and shall raise a definite issue;

(*c*) it shall not contain arguments, inferences, ironical expressions or defamatory statements, nor shall it refer to the conduct or character of any person except in his official or public capacity;

(*d*) it shall not challenge the accuracy of the figures of the Revised Financial Statement;

(*e*) it shall be directly relevant to some entry in the Revised Financial Statement;

(*f*) it shall not criticise any decision of the Government of India in respect of provincial finance; and

(*g*) if it would in itself have the effect of reducing the estimated closing balance of the Province as sanctioned by the Government of India, it must propose some counterbalancing increase in revenue or reduction in expenditure so as to avoid such reduction of the closing balance.

14. *Notice of Resolution.*—A Member, who wishes to move a resolution, shall give notice in writing to the Secretary, prior to the date on which the Revised Financial Statement is presented to the Council, and he shall, at the same time, submit a copy of the resolution which he wishes to move :

Provided that the President may fix a date after which no such notice of resolution may be received.

15. *President may disallow resolution or part of resolution.*—The President may disallow any resolution or part of a resolution without giving any reason therefor, other than that in his opinion it cannot be moved consistently with the public interests, or that it should be moved in the Legislative Council of the Governor General.

16. *Finality of orders.*—(1) No discussion in Council shall be permitted in respect of any order of the President under Rule 15.

Resolution disallowed not to be entered in proceedings.—(2) A resolution that has been disallowed shall not be entered in the proceedings of the Council.

17. *Resolutions admitted to be entered in List of Business.*—Resolutions admitted by the President shall be entered in the List of Business in such order as he may direct.

Discussion of Resolutions.

18. *Member may speak once only, but mover may reply.*—(1) After the mover of a resolution has spoken, other Members may speak to the motion in such order as the President may direct, and thereafter the mover may speak once by way of reply.

(2) No Member other than the mover and the Member in charge shall speak more than once to any motion, except with the permission of the President, for the purpose of making an explanation.

19. *Duration of speech.*—No speech, except with the permission of the President, shall exceed fifteen minutes in duration:

Provided that the mover of a resolution, when moving the same, and the Member in charge, may speak for thirty minutes.

20. *Discussion of resolution.*—The discussion of a resolution shall be limited to the subject of the resolution, and shall not extend to any matter as to which a resolution may not be moved.

21. *Withdrawal of resolution.*—A Member who has moved a resolution may withdraw the same unless some Member desires that it be put to the vote.

22. *President may close discussion.*—When, in the opinion of the President, a resolution has been sufficiently discussed, he may close the discussion by calling upon the mover to reply, and the Member in charge to submit any final observations which he may wish to make:

President may speak before putting question.—Provided that the President may in all cases address the Council before putting the question to the vote.

23. *President may divide resolution.*—If any resolution involves many points, the President at his discretion may divide it, so that each point may be determined separately.

24. *Voting.*—(1) Every question shall be resolved in the affirmative or in the negative according to the majority of votes.

(2) Votes may be taken by voices or by division, and shall be taken by division if any Member so desires.

(3) The President shall determine the method of taking votes by division.

25. *President may fix time for discussion of resolutions.*—(1) The President may assign such time, as with due regard to the public interests he may consider reasonable, for the discussion of resolutions or of any particular resolution.

(2) Every resolution which has not been put to the vote within the time so assigned shall be deemed to have been withdrawn.

26. *Effect of resolution when carried.*—Every resolution, if carried, shall have effect only as a recommendation to the Chief Commissioner.

27. *Question already discussed or resolution disallowed or withdrawn not permitted for one year.*—When a question has been discussed at a meeting of the Council, or when a resolution has been disallowed under Rule 15 or withdrawn under Rule 21, no resolution raising substantially the same question shall be moved within one year.

28. *Discussion of Revised Financial Statement when to close.*—The discussion of the Revised Financial Statement shall be closed not later than the 16th day of March or, if the discussion commences before the 13th day of March, then on the third day of the discussion.

The Budget.

29. *Presentation of Budget to Council.*—(1) On such day as may be appointed in this behalf by the Chief Commissioner, the Budget shall be presented to the Council by the Finance Member, who shall describe the changes that have been made in the figures of the Revised Financial Statement, and shall oxplain why any resolutions passed in Council have not been accepted.

Circulation of Budget.—(2) A printed copy of the Budget shall be given to each Member.

30. *Discussion of Budget in Council.*—(1) The general discussion of the Budget in Council shall take place on such later day as may be appointed by the President for this purpose.

Resolution on taking of vote in regard to Budget not permitted.—(2) At such discussion, any Member shall be at liberty to offer any observations he may wish to make on the Budget, but no Member shall be permitted to move any resolution in regard thereto, nor shall the Budget be submitted to the vote of the Council.

Time-limit for speeches.—(3) It shall be open to the President, if he thinks fit, to prescribe a time-limit for speeches.

31. *Limitation of discussion.*—The discussion shall be limited to those branches of revenue and expenditure which are under the financial control of the Local Government, and it will not be permissible to enter upon criticisms of Imperial Finance.

32. *Finance Member may reply: President may speak before closing discussion.*—The Finance Member shall have the right of reply, and the discussion shall be closed by the President making such observations as he may consider necessary.

General.

33. *Members how to speak.*—(1) Every Member shall speak from his place, shall rise when he speaks and shall address the Chair.

(2) At any time, if the President rises, any Member speaking shall immediately resume his seat.

34. *Circulation of printed speeches.*—(1) Any Member may send his speech in print to the Secretary not less than two clear days before the date fixed for the discussion of a resolution, with as many copies as there are Members, and the Secretary shall cause one of such copies to be supplied to every Member.

(2) Any such speech may, at the discretion of the President, be taken as read.

35. *Preservation of order.*—(1) The President shall preserve order and all points of order shall be decided by him.

(2) No discussion on any point of order shall be allowed unless the President thinks fit to take the opinion of the Council thereon.

(3) Any Member may at any time submit a point of order to the decision of the President.

(4) The President shall have all powers necessary for the purpose of enforcing his decisions.

36. *Chief Commissioner may appoint Member to Preside at discussions.*—The Chief Commissioner may appoint a member of the Council to preside in his place, or in that of the Vice-President, on any occasion on which the Revised Financial Statement or the Budget or any portion thereof is discussed in the Council.

37. *Power to suspend rules.*—The President, for sufficient reason, may suspend any of the foregoing rules.

THE SCHEDULE.

Heads open to or excluded from discussion under Rule 11.

Revenue.		Expenditure.	
Heads open to discussion.	*Heads not open to discussion.*	Heads open to discussion.	*Heads not open to discussion.*
I.—Land Revenue.	*IV.—Stamps.*	1.—Refunds and Drawbacks.	*2.—Assignments and Compensations.*
V.—Excise.*	*VI.—Provincial Rates.*	3.—Land Revenue.	*13.—Interest on debt.*
IX.—Forest.	*VIII.—Assessed Taxes.*	6.—Stamps.	*25.—Political.*
X.—Registration.	*XVI-A.—Courts.**	7.—Excise.	*42.—Major Works.*
XII.—Interest.	*XXVI.—State Railways.*	8.—Provincial Rates.	*Interest on debt.*
XVI-B.—Jails.	*All purely Imperial Revenue.†*	10.—Assessed Taxes.	*All Statutory charges.*
XVII.—Police.		11.—Forest.	*All purely Imperial Expenditure.§*
XVIII.—Ports and Pilotage.		12.—Registration.	
XIX.—Education.		18.—General Administration.‡	
XX.—Medical.		19-A.—Courts of Law.‡	
XXI.—Scientific and other Minor Departments.		19-B.—Jails.	
XXII.—Receipts in aid of superannuation, etc.		20.—Police.	
XXIII.—Stationery and Printing.		21.—Ports and Pilotage.	
XXV.—Miscellaneous.		22.—Education.	
XXIX.—Irrigation Major Works.		24.—Medical.	
XXX.—Minor Works and Navigation.		26.—Scientific and other Minor Departments.	
XXXI.—Civil Works.		29.—Superannuation Allowances and Pensions.	
		30.—Stationery and Printing.	
		32.—Miscellaneous.	
		33.—Famine Relief.	
		36.—Reduction or Avoidance of Debt.	
		40.—Subsidized Companies: Land, etc.	
		41.—Miscellaneous Railway Expenditure.	
		42.—Irrigation: Major Works—Working Expenses.	
		43.—Minor Works and Navigation.	
		44.—Construction of Railways charged to Provincial revenues.	
		45.—Civil Works.	

* Mainly court-fees and fines.

† Purely Imperial heads of account are omitted from this list, *e.g.*, II, III, XI, XIII, XIV, etc.

‡ These heads include certain statutory charges, which will be excluded from debate.

§ Purely Imperial heads of account are omitted from this list, *e.g.*, 4, 5, 9, 15, etc.

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Enclosure no. 5 (*ii*).

Rules for the discussion of Matters of General Public Interest in the Legislative Council of the Central Provinces.

NOTIFICATION.

Nagpur, the *1914.*

No. .—In exercise of the powers conferred by Section 5 of the Indian Councils Act, 1909, and with the sanction of the Governor General in Council, the Chief Commissioner is pleased to make the following rules authorising the discussion of any matter of general public interest at any meeting of the Central Provinces Legislative Council :—

Definitions.

1. In these rules—

(1) "President" means—

(*a*) the Chief Commissioner, or

(*b*) the Vice-President appointed by the Chief Commissioner under Section 4 of the Indian Councils Act, 1909, or

(*c*) the Member appointed to preside under Rule 27 ;

(2) "Member in charge" with regard to any subject under discussion means the Member appointed by the Chief Commissioner to perform the functions of the Member in charge under these rules in respect of the business of the Department of the local Government to which the subject under discussion pertains, and includes any Member to whom such Member may delegate any function assigned to him under these rules ; and

(3) "Secretary" means the officer appointed by the Chief Commissioner to perform the duties of Secretary to the Council, and includes every person for the time being exercising the functions of the Secretary.

Matters open to discussion.

2. Any matter of general public interest may be discussed in the Council subject to the following conditions and restrictions.

3. No such discussion shall be permitted in regard to any of the following subjects, namely :—

(*a*) any subject removed from the cognizance of the Legislative Council of the Chief Commissioner by Section 43 of the Indian Councils Act, 1861 ; or

(*b*) any matter affecting the relations of His Majesty's Government or of the Governor General in Council or of the Chief Commissioner with any Foreign State or any Native State in India, or relating to the internal affairs of any such Native State ; or

(*c*) except with the sanction of the Chief Commissioner, any matter which is the subject of discussion between the Governor General in Council and the local Government ; or

(*d*) any matter under adjudication by a Court of law having jurisdiction in any part of His Majesty's Dominions.

Resolutions.

4. Subject to the restrictions contained in Rule 3, any Member may move a resolution relating to a matter of general public interest.

Provided that no resolution shall be moved if it does not comply with the following conditions, namely :—

(*a*) it shall be in the form of a specific recommendation addressed to the Chief Commissioner ;

(*b*) it shall be clearly and precisely expressed and shall raise a definite issue ;

(*c*) it shall not contain arguments, inferences, ironical expressions or defamatory statements, nor shall it refer to the conduct or character of any person except in his official or public capacity.

5. A Member who wishes to move a resolution shall give notice in writing to the Secretary, at least fifteen clear days before the meeting of the Council at which he desires to move the same, and shall, together with the notice, submit a copy of the resolution which he wishes to move :

Provided that the President may allow a resolution to be moved with shorter notice than fifteen days, and may, in any case, require longer notice, or may extend the time for moving the resolution.

6. (1) The Secretary shall submit every resolution of which notice has been given to him in accordance with Rule 5 to the President who may either admit it or, when any resolution is not framed in accordance with Rule 4, cause it to be returned to the Member concerned for the purpose of amendment.

(2) If the Member does not, within such time as the President may fix in this behalf, resubmit the resolution duly amended, the resolution shall be deemed to have been withdrawn.

7. The President may disallow any resolution or part of a resolution without giving any reason therefor other than that in his opinion it cannot be moved consistently with the public interests, or that it should be moved in the Legislative Council of another local Government or of the Governor General.

8. (1) No discussion in Council shall be permitted in respect of any order of the President under Rule 6 or Rule 7.

(2) A resolution which has been disallowed shall not be entered in the proceedings of the Council.

9. Resolutions admitted by the President shall be entered in the List of Business for the day in the order in which they are received by the Secretary :

Provided that the President may give priority to any resolution which he may consider to be of urgent public interest, or may postpone the moving of any resolution.

Discussion of Resolutions.

10. The discussion of resolutions shall take place after all the other business of the day has been concluded.

11. (1) After the mover of a resolution has spoken, other Members may speak to the motion in such order as the President may direct, and thereafter the mover may speak once by way of reply.

(2) No Member other than the mover and the Member in charge shall speak more than once to any motion, except, with the permission of the President, for the purpose of making an explanation.

12. No speech, except with the permission of the President, shall exceed fifteen minutes in duration :

Provided that the mover of a resolution, when moving the same, and the Member in charge may speak for thirty minutes.

13 (1) Every Member shall speak from his place, shall rise when he speaks and shall address the Chair.

(2) At any time, if the President rises, any member speaking shall immediately resume his seat.

14. (1) Any Member may send his speech in print to the Secretary not less than two clear days before the day fixed for the discussion of a resolution, with as many copies as there are Members, and the Secretary shall cause one of such copies to be supplied to every Member.

(2) Any such speech may, at the discretion of the President, be taken as read.

15. The discussion of a resolution shall be limited to the subject of the resolution, and shall not extend to any matter as to which a resolution may not be moved.

16. When a resolution is under discussion, any Member may, subject to all the restrictions and conditions relating to resolutions specified in Rules 3 and 4, move an amendment to such resolution:

Provided that an amendment may not be moved which has merely the effect of a negative vote.

17. (1) If a copy of such amendment has not been sent to the Secretary at least three clear days before the day fixed for the discussion of the resolution, any Member may object to the moving of the amendment; and such objections hall prevail unless the President, in exercise of his power to suspend any of these rules, allows the amendment to be moved.

(2) The Secretary shall, if time permits, cause every amendment to be printed, and send a copy for the information of each Member.

18. A Member who has moved a resolution or an amendment of a resolution may withdraw the same unless some Member desire that it be put to the vote.

19. When in the opinion of the President, a resolution and any amendment thereto have been sufficiently discussed, he may close the discussion by calling upon the Mover to reply and the Member in charge to submit any final observations which he may wish to make:

Provided that the President may in all cases address the Council before putting the question to the vote.

20. (1) When an amendment to any resolution is moved, or when two or more such amendments are moved the President shall, before taking the sense of the Council thereon, state or read to the Council the terms of the original motion and of the amendment or amendments proposed.

(2) It shall be in the discretion of the President to put first to the vote either the original motion or any of the amendments which may have been brought forward.

21. If any resolution involves many points, the President at his discretion may divide it, so that each point may be determined separately.

22. (1) Every question shall be resolved in the affirmative or in the negative according to the majority of votes.

(2) Votes may be taken by voices or by division, and shall be taken by division if any member so desires.

(3) The President shall determine the method of taking votes by division.

General.

23. (1) The President may assign such time as, with due regard to the public interests, he may consider reasonable for the discussion of resolutions or of any particular resolution.

(2) Every resolution which shall not have been put to the vote within the time so assigned shall be considered to have been withdrawn.

24. Every resolution, if carried, shall have effect only as a recommendation to the Chief Commissioner.

25. When a question has been discussed at a meeting of the Council, or when a resolution has been disallowed under Rule 7 or withdrawn under Rule 18, no resolution or amendment raising substantially the same question shall be moved within one year.

26. (1) The President shall preserve order, and all points of order shall be decided by him.

(2) No discussion on any point of order shall be allowed unless the President thinks fit to take the opinion of the Council thereon.

(3) Any Member may at any time [illegible] point of order to the decision of the President.

(4) The President shall have [illegible] necessary for the purpose of enforcing his decisions.

27. The Chief Commissioner may appoint a Member of the Council to preside in his place, or in that of the Vice-President, on any occasion on which a matter of general public interest is discussed in the Council.

28. The President, for sufficient reason, may suspend any of the foregoing rules.

Enclosure no. 5 (*iii*).

Rules for the asking of Questions in the Legislative Council of the Central Provinces.

NOTIFICATION.

Nagpur, the *1914.*

No. .—In exercise of the powers conferred by Section 5 of the Indian Councils Act, 1909, and with the sanction of the Governor-General in Council, the Chief Commissioner is pleased to make the following rules authorising the asking of questions at any meeting of the Central Provinces Legislative Council:—

1. In these rules—

(1) "President" means—

(*a*) the Chief Commissioi

(*b*) the Vice-President appointed by the Chief Commissioner under Section 4 of the Indian Councils Act, 1909.

(2) "Member in charge" with regard to any question means the Member appointed by the Chief Commissioner to perform the functions of the Member in charge under these rules in respect of the business of the Department of the local Government to which the subject of the question pertains, and includes any Member to whom such Member in charge may delegate any function assigned to him under these rules; and

(3) "Secretary" means the officer appointed by the Chief Commissioner to perform the duties of the Secretary to the Council, and includes every person for the time being exercising the functions of the Secretary.

2. Any question may be asked by any Member subject to the following conditions and restrictions.

3. No question shall be permitted in regard to any of the following subjects, namely:—

(*a*) any matter affecting the relations of His Majesty's Government or of the Governor General in Council or of the Chief Commissioner with any Foreign State or any Native State in India, or relating to the internal affairs of any such Native State; or

(*b*) any matter under adjudication by a Court of Law having jurisdiction in any part of His Majesty's Dominions.

4. No question shall be asked unless it complies with the following conditions, namely:—

(*a*) it shall be so framed as to be merely a request for information,

(*b*) it shall not be of excessive length,

(*c*) it shall not contain arguments, inferences, ironical expressions or defamatory statements, nor shall it refer to the conduct or character of any person except in his official or public capacity, and

(*d*) it shall not ask for an expression of an opinion or the solution of a hypothetical proposition.

5. In matters which are or have been the subject of controversy between the Governor General in Council and the Secretary of State or the local Government, no question shall be asked except as to matters of fact, and the answer shall be confined to a statement of facts.

6. A Member who wishes to ask a question shall give notice in writing to the Secretary at least ten clear days before the meeting of the Council at which he desires to put the question and shall together with the notice, submit a copy of the question which he wishes to ask:

Provided that the President may allow a question to be put with shorter notice than ten days, and may in any case require longer notice, or may extend the time for answering a question.

7. (1) The Secretary shall submit every question of which notice has been given to him in accordance with Rule 6 to the President, who may either allow it or, when any question is not framed in accordance with Rules 4 and 5, cause it to be returned to the Member concerned, for the purpose of amendment.

(2) If the Member does not, within such time as the President may fix in this behalf, resubmit the question duly amended, the question shall be deemed to have been withdrawn.

8. The President may disallow any question, or any part of a question, without giving any reason therefor other than that in his opinion it cannot be answered consistently with the public interests, or that it should be put in the Legislative Council of another local Government or of the Governor General.

9. No discussion in Council shall be permitted in respect of any order of the President under Rule 7 or Rule 8.

10. Questions which have been allowed shall be entered in the List of Business for the day, and shall be put in the order in which they stand in the list before any other business is entered upon at the meeting.

11. Questions shall be put and answers given in such manner as the President may in his discretion determine.

12. Any Member who has asked a question may put a supplementary question for the purpose of further elucidating any matter of fact regarding which a request for information had been made in his original question.

13. The Member in charge may decline to answer a supplementary question without notice, in which case the supplementary question may be put only in the form of a fresh question at a subsequent meeting of the Council.

14. These rules, except Rules 6 and 7, apply also to supplementary questions:

Provided that the President may disallow any supplementary question without giving any reason therefor.

15. The President may rule that an answer to a question in the List of Business for the day shall be given on the ground of public interest even though the question may have been withdrawn.

16. No discussion shall be permitted in respect of any question or of any answer given to a question.

17. All questions asked and the answers given shall be entered in the proceedings of the Council:

Provided that no question which has been disallowed by the President shall be so entered.

18. The President may assign such time as, with due regard to the public interests, he may consider reasonable for the putting and answering of questions.

EAST INDIA (POLICE).

CORRESPONDENCE

RELATING TO THE

PROCEDURE IN REGARD TO CONFESSIONS OF PERSONS ACCUSED OF CRIMINAL OFFENCES.

Presented to Parliament by Command of His Majesty.

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EAST INDIA (POLICE).

CORRESPONDENCE

RELATING TO THE

PROCEDURE IN REGARD TO CONFESSIONS OF PERSONS ACCUSED OF CRIMINAL OFFENCES.

Presented to Parliament by Command of His Majesty.

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EAST INDIA (POLICE).

CORRESPONDENCE

RELATING TO THE

PROCEDURE IN REGARD TO CONFESSIONS OF PERSONS ACCUSED OF CRIMINAL OFFENCES.

No. 1.

Letter from the Government of India to the Secretary of State for India, No. 3 (Home), dated the 24th July, 1913.

We have the honour to communicate, for your Lordship's information, the result of an examination which we have made, in consultation with local Governments, of certain important considerations relating to the recording of the confessions of persons accused of criminal charges.

2. The enquiry formed part of a general examination, which was initiated in 1911, of the provincial rules in force governing various matters connected with the investigation of offences by the police, the object of which was to apprise all local Governments of the action which had been taken in other provinces towards dealing with the same subjects, and to ensure the further scrutiny of the local regulations with a view to remedying possible defects in them and embodying provisions which had been found useful elsewhere. With our Home Department letter of the 12th July, 1911, we accordingly circulated a précis of the orders in force on the subject of the procedure to be followed in the production before magistrates of accused persons who had intimated a wish to confess, and in the actual record by magistrates of the confessions of persons who were thus brought before them, and while inviting opinions regarding amendments which might suggest themselves, we particularly asked for answers to the following questions, namely :—

(1) whether, on a balance of advantages and disadvantages, it facilitated the ends of justice to have confessions recorded at all before the trial commences, except in very special circumstances and by the orders of the District Magistrate;

(2) whether, assuming that the practice of recording confessions before trial continued, it was practicable to introduce more stringent safeguards against abuse; and

(3) whether the actual procedure of magistrates in recording confessions was susceptible of improvement.

We annex copies of the replies received (enclosures Nos. 2 to 11), and in reviewing the matter we have had regard to various suggestions which have been mooted by questions in the House of Commons and in the course of discussion in the Imperial Legislative Council, indicating possible lines of reform. Briefly these may be said to comprise the prohibition of all record of confessions prior to trial, or a legal instruction to the effect that no conviction could be based upon a confession, once made but subsequently retracted, unless the commission of the offence was materially corroborated by direct evidence.

3. As Your Lordship is aware, the powers of magistrates to record statements or confessions made in the course of police investigations are defined in Section 164 of the Criminal Procedure Code, which runs as follows :—

"164 (1) Every Magistrate not being a police-officer may record any statement or confession made to him in the course of an investigation under this Chapter or at any time afterwards before the commencement of the inquiry or trial.

"(2) Such statements shall be recorded in such of the manners hereinafter prescribed for recording evidence as is, in his opinion, best fitted for the circumstances of the case. Such confessions shall be recorded and signed in the manner provided in section 364, and such statements or confessions shall then be forwarded to the Magistrate by whom the case is to be inquired into or tried.

"(3) No Magistrate shall record any such confession unless upon questioning the person making it, he has reason to believe that it was made voluntarily; and, when he records any confession, he shall make a memorandum at the foot of such record to the following effect:—

"I believe that this confession was voluntarily made. It was taken in my presence and hearing, and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him.

(Signed) A. B.,
Magistrate.

"*Explanation.*—It is not necessary that the Magistrate receiving and recording a confession or statement should be a Magistrate having jurisdiction in the case."

The major issue raised in the discussion of this matter involves the cancellation of these provisions; the minor issues cover the possibility of adopting further precautions with the object of securing that confessions are only recorded if voluntarily made. Underlying the consideration of the whole question is the desire to prevent any miscarriage of justice, arising from the record of confessions which are not willingly volunteered, or which are taken down in circumstances in which it cannot be guaranteed that they contain a full statement of what the accused person really wishes to say; and with that desire it is needless to state that we are in complete sympathy. The dangers to be avoided are the misuse of their powers by the investigating police in order to induce persons charged with offences to make false admissions of guilt, and the intervention of inexperienced magistrates who do not appreciate the necessity of ascertaining the circumstances in which a statement is made or of recording it carefully and in detail. We have no wish to deny these risks or to refrain from any measures calculated to minimise them, and we think that it may fairly be claimed that they have long been generally recognised, as is shown by the instructions already issued. There are, however, considerations which deserve to be carefully weighed before the simple expedient is accepted of abolishing the recording of all confessions made before trial, and in dealing with the question we think it essential that it should be approached, not from the standpoint of condemning the whole police force as unscrupulous, but rather with the desire to encourage among the police a spirit of pride in their work, to discourage attempts to substitute confessions for intelligent detective methods, and to emphasise the disgrace which attaches to resort to the ill-treatment of prisoners. We believe that this feeling is to be found among the new generation of police to a greater extent than is frequently credited, and our policy should proceed upon its recognition rather than upon an attitude of widespread distrust.

4. Reverting to the main consideration whether the recording of confessions prior to trial shall be allowed at all, the salient feature of the correspondence is the practical unanimity of judicial authority against any prohibition. With the exception of the Lower Burma Chief Court, three Judges of the Madras High Court and one Judge of the Bombay High Court (differing, in the two instances last mentioned, from the majority of their colleagues), the leading Courts in other provinces traverse the arguments advanced in our letter of the 12th July, 1911, and urge that no such departure of practice is required. That these high Judicial officers are unwilling to approve of any such prohibition is a valuable indication of the fact that these confessions are not regarded in the majority of cases as false or tainted; in fact, the instances in which the courts express a positive opinion that a bogus confession has been obtained by reason of the tutoring or ill-treatment of the prisoner by the police are, we believe, few. It happens, no doubt, that the courts may think it unsafe, in the absence of other evidence, to convict upon the basis of a retracted confession, but this is not necessarily synonymous with a finding that the confession was untrue or that it had been obtained by improper means. The local Governments are in general agreement in this matter with the courts. The Government of Madras regard the idea of prohibition as unnecessary and inopportune; that of Bombay is convinced that to forbid the recording of confessions before trial would be to put a serious hindrance in the way of administering justice, which might end in the necessity of altering the law so as to make police officers competent to testify to statements made to them by accused persons. The Government of Bengal and the late Government of Eastern Bengal and Assam concur in the view of the Calcutta High Court that a man alleged to be implicated in a crime should be permitted to make any statement he likes before a trustworthy and experienced magistrate. The Lieutenant-Governor of the United Provinces draws attention to various orders which are in force prescribing the proper use of confessions, and the Lieutenant-Governor of Burma regards

a confession as evidence, for what it is worth, which should not be intentionally ignored; he holds that it would be disastrous to discard the evidence of confessions. The Chief Commissioner of the Central Provinces considers that the abandonment of the magisterial record of confessions would in no way reduce either the temptation or the opportunities to put pressure on accused persons, and if this, therefore, is the main object of change, it would not be achieved. The Chief Commissioner of the North-West Frontier Province would encourage the making of confessions, leaving it to the judiciary to assess them at their proper value and to bring to notice any allegations of their having been extorted by improper means.

5. In the face of this consensus of opinion we are not prepared to support the radical modification of procedure which has been suggested. Practically the upshot of the discussion is that much experience shows that confessions are frequently willingly made, in circumstances which afford no ground for doubting their truth; their prompt record by a responsible magistrate at least ensures that there is no conflict as to what the accused actually did say, and as long as statements made to a police officer are inadmissible in evidence, this result can only be secured in this way; the degree of credence to be attached to such a statement is for the court to determine, but because abuses may occur there is no cause to refuse entirely to accept this source of information; the proper remedy is to minimise the chances of its being abused. The advocates of prohibition are ordinarily actuated by two expectations, firstly, that it will do away with one of the principal incentives that the police have for ill-treating accused persons, and secondly, that it will compel the police to rely upon evidence and the pursuit of clues, in place of the confession of the accused, as a means of securing the conviction of the guilty. Of these two arguments most weight attaches, probably, to the second, which usually influences those executive and police officers who incline towards this policy, although it should be possible to achieve the end in view by other means. But the prohibition of confessions would do little in itself to diminish the risk of the ill-treatment of the accused, because the obtaining of a confession is not the sole, or even the principal, motive which induces incompetent or dishonest police officers to resort to a mixture of coaxing, threatening, worry and ill-usage; their object is rather to induce the accused to give up stolen property or to indicate where some clue may be found, and the opportunities of putting pressure on him with this in view would still exist. If this is the case it seems to us to be unwise to ignore the proved fact that the novice in crime in this country is frequently unable to keep his guilty knowledge to himself, while even the more hardened criminal not infrequently insists upon unburdening his mind, and the prohibition of confessions would only deprive the courts of evidence which in many cases may be quite reliable and of value, without ensuring that a higher standard of police investigation will be attained in consequence. That confessions, after they are made, are frequently retracted is not surprising; once the accused finds himself awaiting trial there are his fellow prisoners and, in some instances, possibly even the prison warders, to advise him to withdraw his statement and adopt a line of defence, which they sometimes suggest. It is easy to represent that retraction can do no harm, while it may turn the scale in his favour, and after the first moment of excitement in which the confession was made these considerations may well prevail, but that fact does not inevitably indicate that the first confession was false, and for what it is worth, we are strongly of opinion that the courts should be able to consider it.

6. Our conclusion in this respect need not, however, prevent the adoption of any measures calculated to discourage the police from placing reliance on confessions and thus neglecting to pursue definite clues, to diminish the risk of the ill-treatment of accused persons, or to give surer guarantees that confessions made under section 164 are really voluntary and are carefully recorded, and we proceed to discuss *seriatim* the various suggestions which the correspondence has revealed. Some of these were put forward in our letter of the 12th July, 1911; others have been advanced by local Governments.

(a) *Proposal that the police should be forbidden to question a prisoner once he has been arrested.*

The Madras Government recommend the issue of instructions to make it clear that when the police are endeavouring to discover the author of a crime there is no objection to their making enquiries of, or putting questions to, any person from whom they think they can obtain useful information, but that when once an accused

person has been arrested, while they may, and indeed should, listen to any statements which he may voluntarily make, they should be strictly forbidden to interrogate him or press him to make a statement. The primary duty of the police after arrest is to take an accused person before a magistrate within the time prescribed in section 61 of the Criminal Procedure Code, and it is only in very exceptional circumstances that he should thereafter be returned to police custody. We understand that the instructions actually issued in Madras further stipulate that if the police desire to question an accused after arrest, the permission of the magistrate must be obtained. We welcome these suggestions as most useful, and are prepared to direct their general adoption. It is true that no rules will prevent the police from questioning a man if they wish to do so and have the opportunity while he is in their custody, but if they do so they will know that they are acting contrary to rule, and it is only by the steady pressure of instructions that they will be made to understand that attempts to obtain confessions are not only improper but a sign of want of intelligence or a lack of industry. It would be irrational to forbid the interrogation of a man while he is merely a suspect, but once he has been arrested (and he should not be arrested on insufficient evidence) he should not be pressed to incriminate himself. The object, in fact, is to limit the use of section 164 as far as possible to cases in which the accused is really anxious to unburden his mind before a magistrate. Making allowances for differences in the Indian system as to the evidential value of statements made to the police, the remarks of Lord Brampton on the point in an address to English constables [of which we annex an extract (enclosure No. 12)] seem to us clearly to summarise the appropriate principles to be followed.

(b) *Proposal that a prisoner who has confessed should, in no circumstances, be returned to police custody.*

This was mooted in our letter of the 12th July, 1911, and the general view of those consulted is that an absolute prohibition of remands to police custody after confession is impracticable, since the prisoner may be required to identify persons or property, to assist at the discovery of property, or, generally, to be present while his statement is being verified. It is, moreover, to be remembered that it is not the prisoner who has made a confession that stands in much danger of ill-treatment; it is true that he might be further tutored, but it is rather the man who has been sent up to make a statement and who, at the last moment, declines to do so, whom the police are likely to molest. While, however, a rigid restriction of remands is opposed, there is evidence that the cautious exercise of the power to remand may rightly be insisted upon, and after consideration of the various suggestions made we think the following principles should be insisted upon :—

(i) A remand to police custody should not be given unless the officer making the application is able to show good and satisfactory grounds for it; a general statement that the accused may be able to give further information should not be accepted.

(ii) No such order should be passed by an officer of lower status than a stipendiary magistrate exercising second-class powers.

(iii) Whenever possible, where the object of the remand is the verification of the prisoner's statement, he shall be remanded to the charge of a magistrate. (The Calcutta High Court would forbid the presence of the investigating police and direct the magistrate merely to confine his attention to verifying the facts alleged, while refraining from any attempt to obtain admissions in corroboration of new facts, but in practice, we think it impossible to attempt an absolute direction to this effect. The presence of the investigating police may, in certain circumstances, be essential, while the magistrate may be trusted to exercise a proper discretion.)

(iv) The period of the remand should always be as short as possible.

(v) A prisoner who has been produced for the purpose of making a confession, and who has declined to do so, or has made a statement which, from the point of view of the prosecution, is unsatisfactory, should in no circumstances be remanded to police custody.

(vi) So far as is practicable, confessing prisoners while in jail awaiting trial should be separated from others.

All these safeguards should materially diminish any risk of abuse of the power to remand to police custody, and at the same time they recognise the practical conditions in which investigations, &c., are conducted, which in some instances preclude the issue of absolutely rigid rules.

(c) *Proposal that confessions should only be recorded by a magistrate having jurisdiction, a 1st class magistrate or a specially empowered 2nd class magistrate.*

There is practical agreement among those consulted that the more experienced and responsible the magistrate who records a confession the better. While the risk that a junior magistrate is likely to be improperly influenced by the police is apt to be exaggerated, the presumption is that the more senior officers are more likely to observe carefully the prescribed procedure and to bring a more mature judgment to bear. Good reason has been shown for discarding the condition that the magistrate before whom the accused is brought must be the one who will commit or try the case, but we are willing to limit the recording of confessions to subdivisional magistrates, stipendiary magistrates of the 1st class, or of the 2nd class if specially empowered. We have not overlooked the opinion of the Madras Government that an absolute restriction to 1st class magistrates, who may be on tour, may be inconvenient, or the suggestion of the Government of Bombay that recourse might be had to a magistrate of lower status if a higher officer cannot be reached within a specified time, which is analogous to a rule already current in the United Provinces to the effect that "every confession which a prisoner in police custody wishes to make should be recorded by the highest magistrate, short of the district magistrate, who can be reached in a reasonable time." The Calcutta High Court would also recognise that a magistrate of lower status may be called in if no other is available, but on the whole, we think that such instances of practical inconvenience will be few, and we would be prepared to ignore them in view of the advantages of restricting the record of confessions to courts of status and experience.

(d) *Proposal that no prisoner should be produced for record of his confession unless he has spent at least one night out of police custody.*

The answers received indicate that while the principle underlying the suggestion is recognised to be sound, no definite rule to this effect is practicable. We think that all that can be done is to deprecate the immediate examination of an accused person, directly the police bring him into court, and to suggest the advisability (where possible) of giving him a few hours for reflection, in circumstances in which he cannot be influenced by the police, before his statement is recorded.

(e) *Proposal that no accused person shall be produced before a magistrate to make a confession until he has been examined by the district superintendent or assistant superintendent of police.*

A rule to this effect is current in the Meerut district of the United Provinces, but while it is desirable that the orders of such an officer should be taken at this stage (and equally before a remand to police custody is asked for) a definite instruction to this effect is likely to be inconvenient, as the higher police officers are frequently absent on tour. The procedure might be enjoined as desirable, when practicable.

(f) *Proposal that when a confession is recorded the investigating police shall not be present.*

This suggestion is offered by the Bengal Government, with whom the High Court agrees, and in the United Provinces there is an instruction to this effect, as also that the fact shall be noted on the record. The precaution seems reasonable, and we would support it for general adoption.

(g) *Proposal that confessions should ordinarily be recorded in open court and during court hours, unless for exceptional reasons.*

This too is favoured by the Bengal Government, the idea being, presumably, that all shall be done openly and above board. There may be circumstances requiring a different procedure, but ordinarily that suggested should be feasible, and it possesses some advantages.

(h) *Proposal that confessing prisoners should be questioned by the court whether they have any complaints of ill-treatment to make.*

Of the local Governments who have noticed the point, those of the United Provinces and Eastern Bengal and Assam support the idea, but the Government of Bengal is opposed to the inviting of complaints, and the Allahabad High Court notes that the procedure would be of little benefit. The Chief Commissioner of the North-West Frontier Province considers that it is open to strong objection. It appears to us that the essential point is that the magistrate should satisfy himself that the confession is being voluntarily made, and we would prescribe no direct interrogation of the kind suggested. If an accused person has been coaxed or intimidated into making a false confession, he will certainly have been tutored to deny that he has had any pressure or force put upon him.

(i) *Proposal that a magistrate should question the confessing prisoner with the view of ascertaining the exact circumstances in which his confession was made and the connection of the police with it.*

This is advanced by the Government of Madras, and it merges in a wider proposition which emanates from other quarters (noticeably from Burma and the Central Provinces) that it should be the endeavour of the court to record the confession in as much detail as possible, with a view of affording material from which its genuineness can be judged and of testing whether it is freely made or is merely the outcome of suggestion. We are aware that anything like the cross-examination of the accused has been rightly deprecated by the courts, but it seems to us to be desirable that, without any attempt at heckling or endeavour to entrap the accused, a magistrate should record his statement with as much detail as possible. The more detailed a confession the greater the chances of correctly estimating its value. It is also useful to know precisely how it came to be made, to what extent the police had anything to do with the accused prior to it, and in the confession itself, the fullest possible particulars of the incidents involved. The questions and answers would, of course, be recorded, and any misuse of the procedure would thus be detected. It would also be expedient that the magistrate should add to the certificate required by section 164, in his own hand, a statement of the grounds on which he believes that the confession is genuine, the precautions which he took to remove the accused from the influence of the police and the time (if any) given to him for reflection. In the United Provinces nine definite questions are prescribed calculated to ensure that the confession is being voluntarily made, but such detail is, on the whole, to be deprecated. But if a record of the general character indicated was made, the attention of the magistrate would be directed towards the possible risks against which he had to guard, and the full circumstances of the confession would be stated at the time.

7. These proposals cover the different safeguards which, after careful examination of the circumstances surrounding this difficult question, we are prepared to recommend, and if they meet with Your Lordship's approval, we will address local Governments requesting them to amend their rules in conformity with them, after such consultation with the different High Courts, &c., as may be necessary. So far as possible we would prefer to proceed by the issue of instructions, but the necessity of amending the law can be further considered when the policy to be followed is finally approved. We will await Your Lordship's reply, however, before any action on these lines is taken.

8. As it appeared to be possible that Your Lordship might desire to make public the discussions on the important questions now raised, we have obtained the concurrence of the Judicial authorities who have been consulted to that course.

We have, &c.,

(Signed) HARDINGE OF PENSHURST
O'MOORE CREAGH.
HARCOURT BUTLER.
S. A. IMAM.
W. H. CLARK.
R. H. CRADDOCK.
W. S. MEYER.

Enclosure 1 in No. 1.

Circular letter from A. Earle, Esq., C.I.E., Secretary to the Government of India, Home Department, to all Local Governments and Administrations, Nos.* 781-790, *dated the* 12*th July*, 1911.

(Extract.†)

I am directed to draw the attention of (the Governor in Council) (the Lieutenant-Governor in Council) (His Honour the Lieutenant-Governor) (your attention) to the question of the procedure to be followed both in the production before Magistrates of accused persons to have their confessions recorded, and in the recording by Magistrates of the confessions of persons so produced. The Government of India will be glad if [with the permission of (the Governor in Council) (the Lieutenant-Governor in Council) (His Honour the Lieutenant-Governor)] the provincial regulations on this subject may be similarly examined, and a report submitted with specific suggestions for amendment, where needed, in the light of the remarks in the following paragraphs. To facilitate the task, a précis is sent herewith of the rules in force in other provinces for your information. It is suggested that, as the subject is so closely connected with the administration of justice, the views of the highest judicial authorities may be invited, and that their efforts to put down such abuses as still exist may be co-ordinated with those of the local Government. The question to be considered in connection with confessions, is whether, on a balance of advantages and disadvantages, it pays to have them recorded at all, before the trial commences, except in very special circumstances and by order of the District magistrate. In an unsophisticated community a confessing prisoner will ordinarily persist in his confession throughout the proceedings against him, and no good is secured by hurrying him before a magistrate prior to his trial. In other circumstances a genuine confession may possibly be obtained in the first excitement of the enquiry, but it will frequently be retracted later, and experience shows that in such a case the courts will demand such ample corroboration as would have been adequate for a conviction even without the original confession. The Government of India wish, in the first place, that this question should be considered. Should, however, the (Madras) (Bombay) (Bengal, &c.) (you) Government not consider it possible in present circumstances to go so far as to stop altogether the recording of confessions before trial on the motion of the police, the Government of India would wish the safeguards which already exist to be further examined with a view to increased stringency. It should, at any rate, it is thought, be possible to forbid absolutely the production of prisoners before magistrates of the third class, and to give the power only to the magistrate having jurisdiction in the case, or at least to a first class, or specially selected second class magistrate. It should also be considered whether it is not feasible to make it an absolute rule that once a prisoner has confessed he should in no circumstances be given back into police custody. It might also be possible to lay down that before a confession is recorded an accused person should have spent at least one night out of police custody. In a separate letter the Government of India have suggested the adoption of the Bombay rule that all persons when first produced after arrest should be questioned as to whether they have suffered ill-treatment at the hands of the police. The Government of India hope that it will also be possible to adopt the Bombay procedure on the same subject as regards confessing prisoners. Other precautions may, I am to add, suggest themselves to [(the Governor in Council) (the Lieutenant-Governor in Council) (His Honour the Lieutenant-Governor) (you)]. If so, the Government of India will be glad to consider them. There remains the question of the actual procedure before the magistrate in the event of confessions being allowed to be recorded. This is

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* Madras, Bombay, Bengal, United Provinces, Punjab, Burma, Eastern Bengal and Assam Central Provinces, North-Western Frontier Province *and* Coorg.

† The portions of this letter omitted related to subjects other than the procedure in regard to confessions.

more a matter, the Government of India think, for the judicial authorities than for the local Government. Subject, however, to what they may have to say, the Government of India think that the material contained in the précis will be found to be suggestive.

Annexure.

Précis of rules in force regarding the procedure to be followed in the recording of confessions, &c.

The Punjab and the North-West Frontier Province.—Most elaborate rules have been laid down in the Punjab, chiefly by the Chief Court. Many of the instructions are merely a repetition or amplification of those contained in sections 164 and 364 of the Criminal Procedure Code, but the following are the chief additional instructions:—

(1) Magistrates before whom the police produce any person to make a confession should, before recording the confession, consider whether the person should not be taken before a magistrate of higher rank, and, in doing so, should particularly bear in mind the distance to be travelled, the time it would take to cover the distance, and the urgency and importance of the case.

(2) Magistrates deciding cases should bring to the notice of the District Magistrate any case of a confession which has, in their opinion, been recorded by a magistrate of the 2nd or 3rd class without adequate reason.

(3) Magistrates of the 3rd class should record confessions only under very exceptional circumstances.

(4) The magistrate is directed to desire the accused person to add his signature or mark to the confession, and, if the accused person declines to do so, the magistrate has to state the fact and the reason, if any, assigned by the accused person for so declining.

(5) The magistrate is required, before recording the confession, to record in the memorandum which he is bound by law to make, the steps taken by him to ascertain that the accused person is acting voluntarily in making a confession. In particular, he has to enquire into the circumstances under which a confession is made, the length of time a confessing prisoner has been under suspicion before arrest and the opportunities afforded to his accuser or to the police to induce a confession improperly.

(6) In considering whether the prisoner should be sent to a magisterial lock-up or be remanded to the police, the magistrate should be guided according to the opinion formed—

(i) whether the confession is voluntary or improperly obtained, and

(ii) whether, in case of opinion that the confession is voluntary, he considers that the return of the prisoner to the police is of importance to the proper preparation of the case.

Police instructions supplement the Chief Court's orders by laying down—

(1) That police officers should take accused persons, who are ready to make confessions, to the highest magistrate, short of the District Magistrate, who can be reached in a reasonable time, and should avoid, as far as possible, getting a confession taken by an Honorary Magistrate who, by reason of recent appointment, inexperience or other cause, is imperfectly acquainted with the law.

(2) All cases, in which the accused person is ready to make a confession, should, whenever possible, be taken up personally by a gazetted police officer.

(3) That, if the investigation of a case cannot be completed within the 24 hours prescribed by section 61 of the Criminal Procedure Code, the investigating police officer should never apply (under section 167 of the Code) to a magistrate for further detention in police custody on the ground that an accused person is likely to confess, and should not apply for such detention, except upon the following grounds:—

(i) That it is necessary to compare the accused person's footprints with the tracks to and from the scene of offence.

(ii) When the accused person offers to point out stolen property or property taken in the offence, a weapon or other articles with which the offence was committed, or evidence of value in the case, and there is reason to believe that the offer is made *bonâ fide*.

(iii) When it is believed that persons living along the supposed route taken by the accused person might be able to identify him, and when it is considered unreasonable to expect such persons to come forward upon the chance of being able to give evidence.

(iv) Any other good and sufficient special reason.

The rules in the North-West Frontier Province are the same as those in force in the Punjab, ith some omissions.

Madras.—In Madras, the instructions issued by the High Court are far less elaborate than those issued by the Chief Court of the Punjab. They are briefly to the following effect:—

(1) Village magistrates are absolutely prohibited from reducing to writing or taking the signature of an accused person to any confession or statement whatever made by him.

(2) No magistrate should record any confession or statement made by an accused person under section 164 of the Criminal Procedure Code until he has first recorded in writing his reason for believing that the accused is going to make such statement voluntarily, and until he has explained to the accused that he is under no obligation to answer any question at all, and warned him that it is not intended to make him an approver and that anything he says will be used against him.

(3) Confessions or statements are not in any case to be recorded, nor the warning above mentioned to be given, in the presence of the police officers who have arrested or produced the accused.

(4) If a magistrate has a doubt whether the accused is going to speak voluntarily, he may, if he thinks fit, remand him to a sub-jail before recording the confession or statement.

(5) Magistrates are particularly cautioned to guard against accused persons, who are under remand in a sub-jail, being subjected to any interference or undue influence by the police. Once a prisoner is brought before a magistrate for remand (in a sub-jail), the investigating police officers should not be allowed to have anything to do with him nor to see him, except in the presence of the magistrate.

Police instructions supplement the High Court's orders—

(1) By explaining, with reference to the saving clause in section 26 of the Evidence Act, which recognises the validity of a confession made to a police officer in the presence of a magistrate, that as soon as the prisoner is produced before a magistrate, that functionary, and not the police officer, must conduct all subsequent proceedings and take the statement of the accused.

(2) By directing that all oppression and trickery in regard to obtaining confessions are to be avoided by the police under pain of the severest penalties.

(3) By directing that the police are never to prosecute upon a confession alone, however spontaneously given, and explaining that the only use to make of such confessions is to follow up clues thereby given and circumstances so indicated from other unquestionable sources.

(4) By directing, with reference to the special provisions of section 27 of the Evidence Act, which allows of the proving of so much of a confession made to the police as distinctly relates to facts thereby discovered, that if a disclosure is volunteered by any person in the custody of a police officer, the latter shall, with a view to refreshing his memory, if called on to give evidence, make, if possible immediately, a memorandum of the disclosure in the precise words used by the prisoner and read over the memorandum to the prisoner, but should not take the prisoner's signature on the paper.

The United Provinces.—In the United Provinces the High Court have not laid down any orders of their own, but have, in their rules and orders, directed a reference to the instructions issued by the local Government. The local Government has issued instructions to the following effect:—

(1) In addition to the memorandum required by section 164 of the Criminal Procedure Code, the magistrate is required to state briefly his reasons for believing that a confession has been made voluntarily.

(2) The magistrate is required to see that the police who have been concerned in the investigation, or effected the arrest, are excluded from the Court while the accused person is being questioned, and to take down a note that this precaution has been observed.

(3) In cases of dacoity and other serious crime, it is directed that confessions should be recorded by the District Magistrate, or by a European Magistrate of some standing, in whatever part of the district the crime may have been committed.

The police regulations lay down—

(1) That the truth of a confession should be tested before steps are taken to have it recorded.

(2) That confessions shall be recorded by the highest magistrate, short of a District Magistrate, who can be reached in a reasonable time.

In addition to the above, a circular issued by the Inspector General of Police, dated the 15th July, 1908, warns all District Magistrates and superintendents of police against the tendency to rely on confessions and statements unsupported by material or corroborative evidence, and enjoins the free employment of assistant and deputy superintendents in supervising investigations with the object of counteracting the evil. Similar orders are contained in paragraph 4 of the Resolution of the local Government on the police report for 1907 and in paragraph 2 of the Resolution on the police report for 1908. These orders are further developed in paragraph 2 of the Resolution on the police report for 1909, wherein the responsibility of superintendents and their assistant and deputy superintendents in the matter is emphasised. In the Meerut district special orders obtain, directing that a confessing prisoner should not be taken before a magistrate to have his confession recorded, until he has been examined by the superintendent or by the assistant superintendent of police, directing the police not to request tahsildars and local magistrates to record confessions, and laying down that as a general rule confessions should only be recorded before a first class magistrate at headquarters or by a sub-divisional magistrate.

Eastern Bengal and Assam.—The instructions of the Calcutta High Court are:—

(1) That magistrates should act with deliberation in examining persons brought before them for the purpose of making confessions, and should satisfy themselves that the confession is voluntary, not merely from the declaration of the accused, but from an attentive observation of his demeanour.

(2) That the police officers, who brought the prisoner, should not be allowed to be present while the confession is being taken, or to suggest questions to be put to the prisoner.

The police instructions are:—

(1) That though police officers should make use of confessions if they are voluntarily made, they are warned, firstly, against working with the object of obtaining a confession, and, secondly, against relying unduly on confessions or admissions to prove a case.

(2) That anything which savours of oppression or trickery in ascertaining a confession must be avoided, and that the first aim of a police officer should be to obtain the necessary circumstantial and oral evidence.

(3) Police officers are warned that confessions are often made in order to mislead the enquiring officers, are rarely true in all particulars, are frequently made in order to throw blame on other persons, or with a view to deter from further enquiry, and are generally retracted in Court, in which case, if they stand alone and uncorroborated, they have little or no probative value.

(4) That in many important cases the evidence of an approver is necessary to prove the organisation and doings of the gang, that, if an accused person confesses and names his accomplices, the investigating officer should at once take him before a magistrate for the purpose of having his confession recorded, and that, after this has been done, he should consult the Superintendent of Police as to whether steps should not be taken to have the confession verified.

If the superintendent considers the case of sufficient complexity and importance to justify this procedure being adopted he will lay the facts before the District Magistrate, who, if he agrees with the superintendent, will depute a magistrate to verify the confession locally. During such verification the prisoner is to be in the custody of the magistrate, and the police are to have no concern with him.

Bengal.—The instructions of the Calcutta High Court are:—

(1) That magistrates should act with deliberation in examining persons brought before them for the purpose of making confessions, and should satisfy themselves that the confession is voluntary, not merely from the declaration of the accused, but from an attentive observation of his demeanour.

(2) That the police officers, who brought the prisoner, should not be allowed to be present while the confession is being taken, or to suggest questions to be put to the prisoner.

The Police instructions are:—

(1) That the police should be made to realise that a confession, when it is made, is not a final, but rather an initial, stage in the investigation, and that corroborative evidence is always required.

(2) That investigating officers should be instructed not to work mainly for confessions, and not to rely on them too much, when made.

(3) That in important cases in which an accused person confesses and names accomplices, the investigating officer shall produce the accused, as soon as possible, before a magistrate with a view to having his confession recorded, and at the same time consult the superintendent of police as to whether steps shall be taken to have the confession verified. If this is agreed to by the authorities concerned, the superintendent will ask the magistrate to depute someone in Government service, other than a police officer, to verify the confession locally by way of corroborating the confession.

(4) That, during the period of verification, the confessing accused person shall be in the custody of the officer deputed to make the verification, and not in that of the police.

In Calcutta section 164 of the Criminal Procedure Code is not in force, the Commissioner of Police taking the place of the magistrate. In the suburbs of Calcutta, confessing prisoners are taken before magistrates who have jurisdiction to try the case and to no other magistrate.

Bombay.—The Bombay High Court have issued the following instructions:—

(1) Magistrates are particularly warned to satisfy themselves that no inducement, threat or promise has been made in order to induce a confession, and to arrive, by questioning the accused, at a positive belief that a confession has been voluntarily made, before signing the certificate prescribed by section 164 of the Criminal Procedure Code. In the latter connection the magistrate should, wherever possible, examine the body of the accused, provided that the accused consents to such examination, and, if there appear to be grounds for suspecting violence, he should, if possible, have the accused examined by a medical officer.

(2) Magistrates are directed to question the accused person as to the length of time during which he has been in police custody.

(3) No police officers, other than those required to secure the safe custody of the accused person, when, in the opinion of the magistrate, the duty cannot be safely left to other attendants, shall be present when a confession is being recorded under section 164 of the Criminal Procedure Code. In any case the police officer who made the investigation is not to be present.

(4) When recording the confession, the magistrate should note, (i) the date and hour of the commission of the alleged offence, (ii) the date and hour of the first detention in police custody, (iii) the section of the Code under which the confession is recorded, and (iv) the extent to which the orders referred to under (1) and (2) above have been complied with.

(5) Before ordering the detention of an accused person in police custody under section 167 of the Criminal Procedure Code, the magistrate must explain in writing to what use he intends the presence of the accused in the hands of the police to be put, and will hear any objection which the accused person may have to offer to the proposed order.

(6) When a confession is retracted before the committing magistrate and the Court of Session, and an allegation is made of ill-usage by the police, the Court is enjoined to enquire into all the circumstances in which the confession was taken, and particularly as to the length of time during which the accused person was in custody. Further, the police officer in whose custody the accused person was, when the confession was made, must be produced and closely examined.

The instructions of the Bombay Government amplify the instructions as regards the examination of the bodies of confessing prisoners so as to include the case of all under-trial prisoners (whether confessing or not) on first production before magistrates. They also enjoin that a copy of the medical officer's report as to any marks of violence found on an under-trial prisoner when he first comes to jail should accompany the prisoner to the Court before which he next appears, and provide for immediate enquiry being made if the report discloses marks of violence in regard to which the prisoner makes allegations against the police or others responsible for his arrest or custody.

The Police Manual warns superintendents against the tendency of the police to rely too much on confessions and to neglect the procuring of corroborative evidence.

Burma.—Full instructions, issued under judicial authority, are incorporated in the Lower and Upper Burma Court Manuals. The chief of these are—

(1) Confessions must ordinarily be recorded by the highest magistrate, short of the District Magistrate, who can be reached in a reasonable time.

(2) The magistrate shall not record a confession under section 164 of the Criminal Procedure Code, that is, before the commencement of the enquiry or trial, until he is satisfied, after questioning the person making it, that it is made voluntarily. To show that this has been done, the magistrate, before recording a confession, has to record a memorandum stating the date on which and the place at which the confession is recorded, the circumstances in which the accused was produced before the magistrate, the period during which, and the place or places at which, the accused has been in police custody, the questions asked—and these must not be of a perfunctory nature—to ascertain that the confession is really voluntarily made, the answers of the accused to the questions, the magistrate's reasons for believing the confession to be voluntarily made, and any remarks the magistrate may wish to make. Any written communication made to the magistrate by the police regarding the wish of the accused to confess is to be attached to the memorandum.

(3) When the confession of an accused person is being recorded, none of the police who have been concerned in his arrest or in the investigation of the case, shall be allowed to be present or to be within sight or hearing of the accused. No police officers shall be present, except such as may be necessary to secure the safe custody of the accused.

(4) It is laid down that it is not necessary to warn an accused before recording his confession or examination, but that, when necessary the law should be explained to him.

(5) When an accused, on being brought before a magistrate, retracts a confession previously made and accounts for making it by charges of improper inducement, pressure or other misconduct against the police or other persons in authority, the magistrate is bound to give him an opportunity of proving his allegations. Accusations of the kind are to be thoroughly sifted. The magistrate is required not only to examine such witnesses as the accused may be able to produce, but to call any witnesses whom he himself may have reason to think are able to give evidence in the matter, and to hold a searching enquiry into the allegations. He must invariably record in his order his opinion whether the allegations have been proved or not, and, if the former, he must report the matter to the District Magistrate. Similar orders apply to Sessions Judges in similar circumstances.

The chief additional instructions contained in the Burma Police Manual are as follow:—

(1) If an admission of guilt or complicity in crime is volunteered by any person, the investigating officer should, if possible, immediately make a memorandum of it in the precise words used. The memorandum is to be read over to the person making the disclosure, but such person is not to be required to sign the paper. The memorandum is to be preserved by the investigating officer with a view to refreshing his memory as to the precise words used, in the event of his being required to give oral evidence of any part of the disclosure under section 27 of the Evidence Act.

(2) The police are particularly warned against the danger of unduly relying upon confessions or admissions, and reminded of the importance of substantiating a case, in which a confession is made, by reliable evidence.

The Central Provinces.—The orders issued under judicial authority (the Judicial Commissioner) are:—

(1) Where an accused person alleged to be desirous of making a confession is produced before a magistrate, and the magistrate's powers are lower than those required for trying or committing for trial (as the case may be) a person charged with the

offence for which the accused has been arrested, the accused shall ordinarily be forwarded to the nearest magistrate having the higher description of powers, and the escort required for the journey shall not include any of the police who have already taken part in the investigation. If for special reasons it is desirable to depart from this rule, those reasons shall be recorded by the magistrate with his own hand.

(2) Under section 164 (3) of the Criminal Procedure Code, it is essential to the proper recording of a confession that the accused should be questioned in the first instance with a view to ascertain whether the confession is made voluntarily. The questions so put, together with the answers thereto, must be recorded *before* the confession itself is taken down. If any allegation of ill-treatment is made, the magistrate shall there and then examine the accused's person, if the accused consents, to see whether there are any marks of injuries as alleged, and shall place on record the result of his examination. If the accused refuses to permit such examination, the refusal and the reason therefor shall be recorded. If the magistrate finds that there is reason to suspect that the allegation is well-founded, he shall at once record the complaint, cause the accused to be examined by a medical officer, if possible, and, if he has not power to take up the necessary enquiry himself, forward him to the magistrate having jurisdiction.

(3) Before proceeding to record the confession itself, the magistrate must decide, upon the answers to the preliminary questions and upon the result of any examination of the accused's person, whether there is reason to believe that the confession, if recorded, will be irrelevant on any of the grounds set forth in section 24 of the Evidence Act. If he decides that the confession will be inadmissible on any of the said grounds, he will state his reasons for so thinking and will refuse to record any further statement by the accused.

(4) No attempt shall be made to draw unwilling or unguarded admissions from the accused person by close and inquisitorial questioning; but he may properly be questioned, so far as may be necessary, to enable the magistrate—

(*a*) to elicit from him whatever facts he is willing to state,

(*b*) to understand exactly what is his meaning and how far he intends his confession or admissions to go.

The magistrate should invariably question the accused person as to the length of time during which he has been in the custody of the police. It is not sufficient to accept the date and hour of formal arrest as entered in the police papers. Every question put must be recorded in full with the most scrupulous accuracy, together with the answer.

(5) The magistrate is to take the signature or the mark of the accused person to the record.

(6) When the confession of an accused is being recorded, none of the police who have been concerned in his arrest or in the investigation of the case should be allowed to be present or to be within sight or hearing of the accused.

(7) In every case in which the record of confession by an accused person, taken under section 164 of the Criminal Procedure Code, is received by the magistrate enquiring into or trying the case, the magistrate shall enquire from the accused person whether he made the confession purporting to have been made by him before the magistrate from whom the record of the confession was received. The confession shall be shown or read to the accused person, and the fact noted by the magistrate, and the accused person's answer to the question shall be recorded in full.

The Jail Manual provides that if any wound or mark of recent injury is observed at the medical inspection on the admission of any under-trial prisoner, the prisoner shall be questioned regarding it, and, if he attributes it to violent treatment while under arrest, the matter shall be immediately reported to the District Magistrate, or, in his absence, to the senior magistrate present at headquarters.

The instructions of Government are—

(1) The greatest caution should be exercised by an investigating officer in placing any reliance on a confession or admission of guilt by an accused person.

(2) The practice of adopting a confession blindly and regarding it as obviating the need for further enquiry is absolutely forbidden. Every detail in it is to be put to the test and corroborated as far as possible by independent testimony, so that if, as frequently happens, it is retracted, sufficient evidence may still be forthcoming to ensure success.

(3) Superintendents and assistant superintendents are to make the subordinate police understand that no sort of pressure, direct or indirect, is to be put upon persons to make them confess.

(4) If a disclosure amounting to an admission of guilt or of complicity in crime be volunteered by any person, the investigating officer shall, if possible, immediately make a memorandum of it in the precise words used. He should read the memorandum over to the person making the disclosure, but he may not take the latter's signature on the paper. The memorandum will be preserved by the investigating officer with a view to refreshing his memory as to the precise words used, in the event of his being required to give oral evidence of any part of the disclosure under section 27 of the Evidence Act.

(5) In important cases, if the disclosure thus noted down amounts to a confession of guilt, and there is a magistrate in the neighbourhood, the person making it should be taken before the magistrate as soon as possible in order that the confession may be formally recorded in the manner prescribed by section 164 of the Criminal Procedure Code.

Enclosure 2 in No. 1.

Letter from the Honourable Mr. A. G. Cardew, C.S.I., Acting Chief Secretary to the Government of Madras, Judicial Department, to the Secretary to the Government of India, Home Department, No. 1278-4 *(Judicial), dated the* 12*th June,* 1912.

I am directed to reply to the Home Department letter, No. 781-790, dated the 12th July, 1911, dealing with the question of the procedure to be followed in the production before magistrates of accused persons to have their confessions recorded and in the recording by magistrates of the confessions of persons so produced. The Honourable the Judges of the High Court were invited to give their views on the subject, and copies of their minutes are enclosed.

2. The first question raised in the letter under reply is " whether, on a balance of " advantages and disadvantages, it pays to have confessions recorded at all before the " trial commences." In this connection two extreme views have been expressed : that of Mr. Justice Spencer, who would repeal sections 25 and 26 of the Indian Evidence Act so that confessions of the kind specified therein may be admissible as evidence for what they are worth, and that of Mr. Justice Ayling, who would retain these sections but would repeal section 164 of the Criminal Procedure Code and forbid the recording of confessions prior to trial.

3. The Government consider that there is much force in Mr. Justice Spencer's arguments, but they fear that it would at present be premature to repeal sections 25 and 26 of the Evidence Act. It is not only that the police have not yet reached a sufficiently high standard of trustworthiness, but also that the moral and civic sense of the general population is defective. People who have suffered loss or injury not infrequently urge the police to resort to methods of a highly irregular character, while there is among many classes an under-current of sympathy with the criminal.

4. At the same time the Governor in Council recognises that of late years there has been a very great improvement in police *morale*. As pointed out by Mr. Justice Spencer, public attention is focussed on a few cases of misconduct, while the enormous number of false charges against the police is overlooked. The Madras Government look forward confidently to yet further improvement in police methods and consider it altogether unnecessary and inopportune to repeal section 164 of the Criminal Procedure Code and thus to withdraw from the hands of the investigating officer an instrument which, properly used, may be of great service, while its misuse is becoming increasingly infrequent and may be rendered still more difficult by the adoption of safeguards.

5. Moreover, it frequently happens, as observed by Mr. Justice Duthoit in the judgment reported in I.L.R., VI. All., 550-551, that the confession made immediately after the commission of the offence is genuine; and even if it is subsequently retracted, the fact that it was made at once does possess some evidential value. There are again cases in which it is of the highest importance that we should have a trustworthy record of a confession at a very early stage of the investigation. For example, in the Tinnevelly Conspiracy Case, which was recently tried by a Special Bench of the Madras High Court, the prosecution was able to rely on confessions by different persons which had been promptly recorded in circumstances which showed that there could have been no tutoring by the police.

6. After a very careful consideration of the question in all its bearings, His Excellency the Governor in Council has come to the conclusion that the existing statute law may be left as it is, though additional safeguards should be provided to minimise any tendency on the part of the police to put pressure on accused persons to make a confession.

7. Mr. Justice Phillips has suggested that no police officer below the rank of Inspector should be allowed to ask for the record of a confession. It is usually only at the commencement of the investigation that a prisoner is willing to confess, and as it would seldom be the case that the Inspector would be present then, the Government are unable to support the suggestion. They consider that the character of the new class of sub-inspectors recently created in this Presidency may usually be trusted and that the supervision of superior officers and the careful attention of magistrates will be sufficient to prevent or detect any improper conduct.

8. In paragraph 4 of the letter under reply, the following further safeguards have been suggested :—

(1) To prohibit the production of prisoners before third-class magistrates for recording confessions and to give such power only to the magistrate having jurisdiction in the case, or to first and specially selected second-class magistrates;

(2) To make it an absolute rule that once a prisoner has confessed he should in no circumstances be given back into police custody;

(3) To lay down that before a confession is recorded the accused person should have spent at least one night out of police custody; and

(4) To question all persons when first produced after arrest as to whether they have suffered ill-treatment at the hands of the police.

The Governor in Council agrees with the Government of India that no third-class magistrate should ordinarily record a confession under section 164 of the Criminal Procedure Code, and is prepared to limit the power to the magistrate having jurisdiction in the case or to magistrates of the first class. To limit it to first-class magistrates alone would cause considerable inconvenience in this Presidency, as they are touring officers for the most part and often absent from their headquarters, and the police might have to follow them into remote places with the confessing prisoner. In this Presidency a third-class magistrate is competent to commit persons to the Sessions for trial, and it may therefore happen that he would be the magistrate having jurisdiction in the case; but such cases are likely to be exceptional.

9. With regard to the remaining safeguards suggested in the letter under reply, I am to say that, while the Government of Madras recognise the desirability of keeping all prisoners who express a wish to confess out of police custody for some time before recording their statements, they consider that executive instructions by reason of their greater elasticity would be more suitable than a legislative provision.

This Government are further of opinion that the instructions issued by the Madras High Court for the guidance of magistrates should be amplified so as to direct attention to the importance of ascertaining exactly what happened in regard to the confessing prisoner after the arrival of the police on the scene : *e.g.*, How long after the commission of the offence did the police come and commence investigation? When did they first question the accused? Was he kept under detention before he was formally taken into custody? If so, under what circumstances? How often was he interrogated? Was he urged by the police to make a confession? Does he understand the consequences of the confession, and does he understand that he will not be remanded to police custody? The High Court is being addressed on this subject.

Orders have already been issued requiring an examination of the persons of prisoners when first produced before a magistrate.

10. With regard to the instructions which may be issued to the police, the Governor in Council would follow the English practice and make it clear that, when the police are endeavouring to discover the author of a crime, there is no objection to their making inquiries or putting questions to *any person* from whom they think they can obtain useful information. But when once an accused person has been arrested, while they may, and indeed should, listen to any statements which he may voluntarily make, they should be strictly forbidden to interrogate him or press him to make a statement. It should be impressed on the police that, after arrest, their duty is to take the accused person before a magistrate within the time prescribed in section 61 of the Criminal Procedure Code, and that is only in very exceptional circumstances that he should be thereafter returned to police custody under section 167 of that Code.

11. I am, in conclusion, to express regret that it was not found possible to send an earlier reply to the reference of the Government of India.

Annexure.

MINUTES OF THE HONOURABLE THE JUDGES OF THE HIGH COURT OF JUDICATURE AT MADRAS.

The Hon'ble Mr. Justice Sankaran Nair.

It is quite unsafe to base a conviction on confessions which are afterwards retracted.

If the confession is to be relied upon, it must appear that no police influence was brought to bear upon the person making it. For this I would suggest that, wherever possible, the accused must be taken to the nearest magistrate and by him forwarded, *not* under police escort, to the nearest civilian magistrate. As ordinarily there will be only *one* person to make a confession, it ought not to be difficult for the magistrate to provide escort out of his own peons.

I am not in favour of any second-class magistrate recording any confession. There may be, no doubt, as in every class there are, exceptions. But, as a rule, they cannot be trusted to act without fear of the police. A Prosecuting Police Inspector's pay is Rs. 150. The Police Inspector's pay is Rs. 150 to Rs. 250: the sub-inspector's pay is Rs. 50 to Rs. 100. The sub-inspector is the station-house officer who has to proceed to the scene of offence first. In more serious cases the Inspector follows. And the higher officials—the Assistant, Deputy and Superintendents—follow in very serious cases like murder and dacoity, and are expected to supervise the investigation. It will appear therefore that the investigation is really in the hands of the sub-inspector and Inspector. A magistrate's pay is one hundred rupees except a few stationary sub-magistrates, who, I believe, get Rs. 120. Pay determines the social grade and influence, and even a permanent sub-magistrate's presence is not a guarantee of the voluntary nature of the confession. As a fact, however, a large percentage of these sub-magistrates are permanent clerks on a pay of Rs. 50 or thereabouts made to act as sub-magistrates and draw a pay, say, of Rs. 75. They are considered decidedly inferior in status and position to the police officers who have to deal with them. They generally hesitate to act against police wishes. This is the reason of the want of popular confidence in them so far as the police are concerned. They must be therefore left out of consideration. As to first-class magistrates I take the civilian first. When an accused person is forwarded to him by a magistrate, if he considers there has been a sufficient interval of time to escape the police influence, he may with the usual precautions record the confession. Otherwise he may be allowed to detain him in his own custody (no police guard) as long as he likes and then may record it.

As to the Indian first-class magistrates, so far as this Presidency is concerned, it is not desirable to authorise them to record confessions. Under the system of appointment which once prevailed, we had young and able men appointed first-class magistrates and they formed an independent judiciary who commanded and deserved popular confidence. But the men now appointed commenced their life as clerks below Rs. 40 or Rs. 50 pay. They are probably better revenue officials, but as magistrates they do not command popular confidence. There is no harm in giving the power to record confessions to the men appointed by competition. But the distinction may be invidious and it is safer not to give such power to any non-civilian magistrate.

The other suggestion I have to make is that there should be no remand to *police* custody. The purpose is served by keeping him under the custody of warders or peons who have nothing to do with the police or investigation of crime.

The Hon'ble Mr. Justice Abdur Rahim.

In my opinion the most satisfactory solution of the problem would be to prohibit the use of any confession alleged to have been made by an accused person after arrest by the police and the recording of any such confession by a magistrate before trial. This will not of course prevent the police from making any use that they may find useful of any statement or information supplied by a person under suspicion or in arrest in making further investigation. It is so extremely rarely that any reliance is placed on a retracted confession that the presence of confessions made before trial on the record might well be said to have the effect of embarrassing the magistrates and judges rather than guiding them to the right conclusion. So long as such confessions are admissible in evidence the police officers will always, as experience has shown, be tempted to take the chance for a conviction on confessions alone, however stringent the instructions to them may be as to the proper use that should be made of confessions. And as it is well pointed out in the police instructions (3) of Eastern Bengal and Assam, confessions are often made to mislead the enquiring officers and, I may add, to get off from police custody at any risk. But police officers of the subordinate ranks are most often either successfully hoodwinked or are inclined to save themselves further trouble of investigation. The warning by the magistrate, however careful, is seldom of any use because the motive underlying most pre-trial confessions is to mislead the investigating officer and to be released from police custody as soon as possible and not to make a clean breast of everything actuated by remorse. When the latter motive undoubtedly exists my experience shows that there is no difficulty in securing sufficient evidence to support a conviction without the confession, and such confessions are not usually retracted.

If pre-trial confessions are to remain admissible in evidence, I agree with Sankaran Nair, J., that the sub or stationary magistrates should not be authorised to record them and that they should be recorded by a civilian magistrate of some standing. I approve of the suggestion in paragraph 4 of the Government of India letter that before the recording of the confession the accused should be kept at least for one night out of police custody, and I should add that such arrangements be made for the accused's detention in the meantime as to effectively preclude all police influence.

As regards remands to police custody, it is my experience that the magistrates, generally speaking, are too prone to grant the application of the police officer and are seldom alive to the requirements of law on the subject. I am afraid that many magistrates of the subordinate rank have not the courage, when such an application is made, to properly examine the grounds for the application and to refuse the application when there are no sufficient grounds for remand. On this point the police instructions of the Punjab Government (3) are worthy of adoption, but I should add that the reasons should be fully and clearly stated in the application to the magistrate which ought to be made in writing. Instructions should also be issued to magistrates on the same basis. I should also suggest the adoption of the Bombay rule (5) that the accused or his pleader, if he is represented, should be heard with respect to the application for remand to custody. I should not authorise any but first-class magistrates to make orders for remand to police custody in any case.

The Hon'ble Mr. Justice Sundara Aiyar.

I agree in the view that only first-class magistrates should record confessions, but I would not confine the power to civilian magistrates. I would provide that a magistrate should take steps to keep the accused free of police influence for at least 24 hours, for a longer time generally.

I would not provide that a confession should not be recorded before the regular trial or inquiry. Witnesses are often unwilling to depose in criminal investigations, but the fact that the accused has confessed of his own accord may induce them to depose.

The magistrate should question the accused about his treatment by the police and record any ill-treatment he may speak to.

I agree that when an accused is sent to a magistrate for the purpose of his confession being recorded he should not be sent under police escort.

The Hon'ble Mr. Justice Ayling.

In my opinion it does *not* pay (to quote paragraph 3 of the Government of India's letter) to get confessions recorded between arrest and commencement of trial: and the soundest plan would be to discontinue the practice altogether. So far from hampering, I believe such a step would have the most beneficial effect on police investigation and the administration of justice. At present, once such a statement is recorded, the average police officer considers the case is safe, and relaxes his efforts, if he does not discontinue them altogether: in the majority of cases the confession is subsequently retracted, the court refuses to act on it, and unless good evidence has been secured before the confession, the case probably fails. In the comparatively few cases in which the accused adheres to his confession he would probably have confessed in the course of the trial without any preliminary recording thereof. If on the other hand the police knew that the confession would not be proved against the accused, they would be driven to use all information furnished by him in the legitimate way, *i.e.*, as a basis for further investigation, and I firmly believe the percentage of convictions would show a marked increase.

I am no believer in the efficacy of any of the measures designed to protect accused persons from police influence. It would be most unsafe to send prisoners charged with grave crimes to a first-class magistrate with only peons for escort: and such a measure would not prevent the police having as much opportunity as they liked while on the journey to influence the prisoners. Even the distinction between the sub-jail and the police lock-up is in my opinion too much relied on. It is no doubt not so easy for the police to get hold of a man in the sub-jail: but it is not really difficult, especially if the sub-jail officer (usually the sub-magistrate) is amenable. So also with the status of the magistrate recording the confession. No doubt a first-class magistrate can be better trusted than a magistrate of lower class to put his foot down if he sees reason to suspect improper influences. But it all depends on the prisoner himself complaining and throwing himself on the magistrate's protection. I do not remember ever hearing of a case in which this was done. The fact is the police do not put up a man whom they have induced to confess, unless they are pretty sure he will not give them away: and the preliminary questioning, etc., by a busy magistrate with plenty of other work to do is apt to be of a somewhat perfunctory character.

If it be deemed unsafe to amend section 26 of the Evidence Act until some experience is obtained, I would suggest that departmental orders be issued forbidding the police to put up prisoners before a magistrate for recording confessions without the orders of the District Magistrate: whenever the latter sanctions such a step, he should report the fact to Government stating briefly his reasons.

The Hon'ble Mr. Justice Bakewell.

I agree with Ayling, J.

The Hon'ble Mr. Justice Spencer.

I endorse most of what Ayling, J., has written, and so far as confessions mean statements of accused persons upon which a conviction may be based without any corroborative evidence, I would abolish the taking of them altogether between the arrest and the trial. I may be unorthodox in my opinion, but I would go a good deal farther and amend sections 25, 26 and 27 of the Evidence Act. The status of the police has been raised in recent years by introducing the sub-inspector grade, by endeavouring to recruit the more responsible native officers from a better class of families, and by remodelling the department. The best way to further improve the morality of the force is to encourage them to take a straight path in the detection of offences by showing a little more confidence in their rectitude than is now the fashion. Attention is apt to be focussed on the rare cases that come to light from time to time of that survival of what used to be a common practice of a semi-barbarous country, namely, torture to procure confessions; the public is invited to become hysterical on the subject; and we easily lose sight of the enormous number of false complaints of extorted confessions, of foisted property, and of concocted evidence recklessly preferred against the police by criminals who see their only hope of salvation to lie in an attempt to prejudice the mind of the court against the persons responsible for their prosecution. The disastrous effect upon the morality of the population produced by the vast proportion of grave crimes that go unpunished owing to the limitations placed upon police investigation and the strict exclusion of statements made by accused persons is also a matter which deserves serious consideration. In the flush of excitement after the commission of a crime a man will often freely publish what he has done, but during the uneventful days that he spends in the sub-jail before his trial commences he has time for sober reflection on the probable consequences of what he has done and said, the natural desire of self-preservation reasserts itself and he denies all that he has said, or he attributes it to police influence, knowing that the police have a bad name and that his explanations will be readily accepted. The statement of a criminal at the moment of his arrest, if the account of it can be trusted, is often of the greatest importance. I would instance the case of the lascar who was recently convicted and hanged in England for the murder of a stewardess on a P. and O. steamer and made an incriminating statement or question regarding himself to the police officer who took charge of him on the arrival of the steamer in the docks. The evidence of the police officer was admissible at a trial

in an English Court and a conviction was the result. To take another concrete instance. In the Madura district a man murdered his wife in the dead of night, when she was lying asleep in a house, the doors of which were open. Then he rushed out and told the villagers whom he met what he had done. When he was taken before a magistrate he denied all concern with the murder and suggested that it was the work of thieves and persisted in this defence throughout the trial, although there was no evidence to support his version and no indication of thieves having come. On the side of the prosecution there was no corroborative evidence. A blood-stained piece of wood was found beside the corpse, but there was nothing to show who in particular had used it on the deceased's head. Although everybody knew the man to be guilty, the case ended in acquittal, because according to reported decisions a retracted confession, even if reduced to writing by a magistrate acting in conformity with section 164 and the Criminal Rules of Practice, cannot be acted upon unless corroborated by independent evidence, and verbal accounts of what an accused said must stand on an even lower level. The statements of the accused were inadmissible in evidence as conduct under section 8 of the Evidence Act, because Explanation 1 to that section defines "conduct" as not including statements unless those statements accompany and explain acts other than statements. I believe I am right in thinking that such statements could be proved against a man in English law. If so, my point in citing these two instances of actual cases is this. It is time that an attempt should be made to raise our guardians of the peace to the level of those in England and other European countries and to encourage in them a sense of self-respect by showing we trust them in all cases where they prove themselves worthy of trust. Evidence may freely be admitted to contradict them or to prove that individual policemen are unworthy of credit, but it is not reasonable that a policemen just because he is a policeman should be trusted less than any one else on earth. The remedy that I propose is to abolish the rule of evidence that statements made to the police are not admissible in evidence; to lay it down that as against those that make them, confessions are not necessarily conclusive evidence of the matters stated in them, unless they are made by an accused person at his trial in court when pleading to a charge; to place the responsibility on courts of discriminating between the value of confessions made under varying circumstances, and in every case allowing evidence to be adduced as to the circumstances under which they were made; and impose on sub-jail officers, who are generally magistrates, the duty of inquiring of all under-trial prisoners at their admission into jail whether they have any complaint to make of their treatment since their arrest, of recording their statements in full if they allege ill-treatment, and of having their bodies promptly examined by the nearest medical officer in such a case. Superintendents and Assistant Superintendents of Police should be instructed to constantly impress on their subordinates the importance of not relaxing their efforts to unravel cases to the bottom simply because one or more of the persons suspected to have committed the crime has made some sort of admission. As laid down by the Government of the Central Provinces in the words of the Annexure to the Government of India's letter, the greatest caution should be exercised by an investigating officer in placing any reliance on a confession or admission of guilt by an accused person, and the practice of adopting a confession blindly and regarding it as obviating the need for further inquiry should be absolutely forbidden. Where, however, a statement has been made by an accused person in the hearing of any one and it has a direct bearing on the issues before the court, evidence of it should be admissible for what it is worth, and courts should be allowed full latitude in weighing such statements and assessing them at their proper worth. Confessions are made for various reasons. Some are intended to throw the authorities off the scent. Some are genuine. The danger lies in treating them all alike.

The Hon'ble Mr. Justice Phillips.

I do not agree that confessions before trial should be altogether prohibited. They may be induced by police influence or they may not, and I think that the recording magistrates should make a full inquiry in order to satisfy themselves that the confessions are voluntary before they proceed to record them. In my experience I have found that genuine confessions are retracted just as often as induced confessions, and it is extremely rare to find a case when a confessing prisoner, who has been confined in a large District or Central Jail for some time before trial, does not retract his confession even when made before a committing magistrate. The fact that a confession has been recorded may induce the police to slack off in investigation, but now that the general status of the department has been raised, I do not think that such slackness is so frequent as it used to be. It is well known in the Police Department that a retracted confession by itself will not secure conviction, and consequently an intelligent police officer will continue his efforts to secure corroborative evidence. As remarked by Sundara Aiyar, J., the existence of a confession is often an inducement to witnesses to come forward and give evidence, and this is a point which should not be lost sight of. I think it will be generally admitted that there has been considerable improvement in the work of the police in recent years, and I think that to prohibit confessions altogether would discourage police officers as casting an additional slur on their work. They have been quite sufficiently abused in the past and it might be advisable now to give them some encouragement in the hope that the improvement which has begun may be continued.

It is of course necessary that rules should be prescribed with a view to prevent police officers from inducing confessions by torture or otherwise, but it must not be overlooked that if the police wish to evade the restrictions placed upon them they can generally find some means of doing so. It is therefore a question for consideration whether it is advisable to increase those restrictions or whether it would not be better to trust more to the police themselves, and I think that the necessary restrictions migh be laid down in departmental instructions. If it is laid down that no police officer below the rank of Inspector should be allowed to ask for a confession to be recorded, I think that some weight should be attached to his request. I do not think that it is advisable to restrict the right of recording confessions to first-class covenanted magistrates. They are already so overworked that it is doubtful whether a perfunctory inquiry by them would be of more value than an inquiry by a second-class magistrate or a deputy

magistrate. A civilian magistrate would certainly not be amenable to police influence, but I am inclined to think that the fear of wrongful police influence is somewhat exaggerated. Why should not a man of the rank of Inspector be trusted to do his work properly—subject of course to the control of his superiors?

The question of custody of the prisoner before and after confession is also one of the points which in my opinion is not very material. If the police are bent on exerting a wrong influence, they can do so through peons or sub-jail warders. All that is required is that the recording magistrate should satisfy himself that the confession is voluntary, and for this purpose he should personally see that the prisoner is kept away from the police for some reasonable period, and question him closely as to the reason for his confession.

I think, therefore, that the rules in force in Madras ought to be sufficient to ensure the proper recording of confessions. The question is really one of the proper working of the Police Department, and I do not think that that department will be improved so long as they are given to understand that under no circumstances will police officers be trusted to do their work as it should be done.

The Hon'ble the Chief Justice.

The difficulty of this question is illustrated by the divergence of view of the civilian judges who have had practical experience, at first hand, of the working of the present system.

Although I think there is considerable force in Ayling, J.'s, observations, I am not prepared to adopt his suggestion that in no case should a confession made after arrest and before trial be admissible in evidence. Even if it were adopted it would have to be subject to the proviso that the fact that a prisoner had confessed might be taken into consideration in connection with the question of sentence if he is convicted. A prompt confession, made in circumstances which leave no room for doubt as to its truth and voluntary character, is a matter to be considered in the prisoner's favour in determining the sentence. This is a point which seems to have been lost sight of.

On the other hand, I do not think the time has come for making confessions to the police admissible in evidence, and leaving it to the court to attach such weight to the confession as it thinks fit, which I understand to be Spencer, J.'s, suggestion.

As regards this Presidency, I hope I am not taking an unduly optimistic view in thinking that the *morale* of the police has improved and that it will continue to improve. Even if this is not so, I think the subordinate judiciary and the subordinate police must realise by this time that a confession, as the foundation of a case for the prosecution, is of very little use.

I would leave the statute law as it is.

As regards this Presidency, I think the High Court orders, supplemented by the existing police instructions, if honestly observed and enforced, ought to be sufficient to prevent abuses. But in this matter something in the nature of a uniform Code, applicable generally throughout India, seems desirable, and to secure this end I should raise no objection to the adoption of the Bombay rules.

The Hon'ble Mr. Justice Benson.

The papers were circulated when I was on leave, so I do not now think it necessary to record any lengthy minute on the questions raised. I may, however, say that I entirely agree with the minute of Phillips, J., and would accept the conclusions of the Chief Justice.

The Hon'ble Mr. Justice Wallis.

I am not prepared to recommend that confessions should be made inadmissible in evidence. The result of so doing would probably be the increased fabrication of evidence to prove what was well known but could not otherwise be proved. On the whole, I regard the admissibility of confessions as the lesser evil. I agree generally with the conclusions of the Chief Justice.

Enclosure 3 in No. 1.

Letter from C. A. Kincaid, Esq., C.V.O., Secretary to Government, Bombay, to the Secretary to the Government of India, Home Department, No. 3780 *(Judicial), dated* 17*th May,* 1912.

I am directed to refer to Home Department letter, No. 781-790, dated the 12th July, 1911, on the subject of the recording by Magistrates of the confessions of accused persons before trial and to reply as follows.

2. The Governor in Council is unable to accept the premises on which the proposals embodied in the above letter are based. These are :—

(*a*) That in an unsophisticated community an accused who makes a confession is likely to adhere to it throughout the course of the proceedings, and that accordingly nothing is gained by having his confession recorded before the actual commencement of his trial.

(*b*) That in the case of retracted but genuine confessions the courts will demand such corroborative evidence as would be sufficient in itself to secure convictions.

With regard to the first premise I am to point out that in the interval between arrest and trial a prisoner, however unsophisticated, is necessarily subject to many influences tending to make him retract. In jail it is impossible to keep him separate

from other prisoners, often old offenders, who explain to him the folly of telling the truth. He also receives similar advice from the friends and especially the lawyers who visit him.

With regard to (*b*), I am to point out that it has not been the rule of the courts of this Presidency to demand in the case of retracted confessions such ample corroborative evidence as would be sufficient to prove guilt without any confession at all. Confessions of which the genuineness is apparent from their fulness and consistency and by the circumstances in which they have been recorded have always been regarded by the Bombay High Court as evidence so valuable as to justify, even when uncorroborated, a conviction.

3. The Governor in Council has obtained the opinions of the Judges of the High Court and of a number of the most experienced District Magistrates and District Judges of the Presidency. In view of the almost unanimous opinions expressed by these officers the Governor in Council is convinced that to forbid the recording of confessions before trial would be to put a serious hindrance in the way of administering justice. The accused will continue to be subjected to the influences already mentioned, and will simply not confess at all. And, since in India the police cannot count on the public for assistance, the result will be a serious diminution in the detection and punishment of crime. Indeed, if the practice of recording confessions before Magistrates were done away with, it would probably in the end prove necessary to alter the law in such a way as to make police officers competent to testify to statements made to them by accused persons, a step which would bring the criminal procedure of India into line with that of other countries.

4. I am to quote the remarks made by Sir Narayan Chandavarkar on the general question of the value of confessions in India :—

> " It has been remarked in some quarters that the readiness with which illiterate and ignorant persons accused of crime confess in a large number of cases at the beginning of police investigation and retract the confession later on when trial has commenced shows that those confessions are, generally, the result of police torture or influence. This remark ignores one fact, which is patent to any one who knows the character of our people, especially the illiterate and ignorant portion of them. In ordinary life we find that when a servant is suspected of anything wrong he will first deny, but after a little questioning he will give evasive answers, and at last admit. The fact is, our people cannot successfully conceal their acts or motives. Hence, it is that when a man, who has committed a crime, is arrested, he will, after a little questioning, make a clean breast of it. The unsophisticated man in this country may be given to lying, but he does not know, because he has not learnt, the art of persisting in his lie, and keeping his own counsel so as to mislead others for any length of time."

5. With regard to the restrictions proposed by the Government of India, the Governor in Council is of opinion that the rules already in force in this Presidency constitute ample safeguards. The Governor in Council is of opinion that it is inadvisable to lay down any rules as to the length of time the accused should be out of police custody before he is allowed to make a confession. Such a matter is essentially one for the exercise of the Magistrate's discretion.

As to the proposal that an accused who has confessed should in no case be handed back to police custody, the Governor in Council would point out that it is often immediately after a confession that it is most essential for the police to have the accused handed over to them. He may be required to point out and identify his associates and to hand over property.

6. The Governor in Council is, however, prepared to accept the suggestion that, as far as possible, confessions should be recorded by the Magistrate of the highest class available, and that an accused should be taken before a third class Magistrate only when it is impossible to produce him before a Magistrate of higher rank within 12 hours. If this proposal meets with the approval of the Government of India, the Governor in Council will move the High Court to embody it in their circular orders.

7. The Honourable Mr. M. B. Chaubal has made two suggestions, and the minute recorded by him is attached to this letter.

Annexure 1.

Minute recorded by the Honourable Mr. M. B. Chaubal, dated the 25th April, 1912.

Though I believe that there is still considerable improper influence exercised by the police both in obtaining confessions and in making prisoners stick to them in the committing magistrate's courts, I agree that it will not do to give up retracted confessions and make them altogether inadmissible in evidence, and that such a step in the present state of efficiency in the police force must prejudicially affect the volume of crime in the country.

With reference to the concluding portion of paragraph 4 of the letter under reply, I desire to suggest for the consideration of the Government of India two proposals which I believe are calculated to materially check objectionable police practices and give to accused persons a fairness of trial which I consider desirable in the interests of judicial administration.

(*a*) I desire that section 162 of the Criminal Procedure Code should be so amended as to secure to the accused or his pleader free access to police papers and to the statements of witnesses during the police investigation, certainly in the Courts of Session and perhaps also in the magistrates' courts. I am of opinion that there can be no useful purpose served by keeping the course of police investigation a sealed book to the accused or his counsel after such investigation has terminated, while on the other hand such access is likely to give to the accused opportunities for exposing some of the unfair practices resorted to by the police, and to enable the trying judge to correctly appreciate the worth of the witnesses for the prosecution. A witness, *e.g.*, has made three or four varying statements on material points during the police investigation. It is only his last and finished version which appears before the court, but the accused is often-times entirely ignorant of the changes and improvements in the witness's story, and is not in a position to show the judge the degree of credibility which ought to attach to the statements of such a witness. Under the law as it stands at present, the accused is entirely at the mercy of the trying judge who may or may not have been diligent enough to wade through the police papers, and at the mercy of the public prosecutor, who in the mofussil is not often fair enough to point out to the Judge the previous variations in the story of the witness. There is no reason why as regards these papers the prosecuting counsel should be in a position of advantage as compared with the accused's counsel. The desirability of this change would naturally not strike trying magistrates, but there is reason to believe that many Session Judges and the entire bar would be glad if the said section were amended as proposed. The desirability of such an amendment has been forced upon me during a fairly large practice at the bar extending over 27 years.

(*b*) The other suggestion I desire to make relates to what are known as magisterial lock-ups. There is one of these at almost every taluka station, and under-trial prisoners are confined in these. Though known as magisterial these lock-ups are controlled and guarded by the same subordinate police force to which the investigating police belong. Practitioners in criminal courts often complain that these lock-ups are easily accessible to the investigating police, notwithstanding rules and departmental circulars to the contrary, and in some cases these complaints are justified. There is of course no positive ill-treatment while prisoners are there, but if confessions have been obtained wrongly, this easy access is frequently utilised for such intimidation or inducement as will make the accused stick to his confessional statement. The remedy I suggest in order to mitigate and check this evil is that the police manning these places of confinement should be a separate branch of the police, and their leave, promotions, &c., should all be entirely in the hands of the District Magistrates.

Annexure 2.

Minutes recorded by the Honourable the Judges of the High Court, Bombay, re *recording of confessions.*

With regard to the first question on which our opinion is asked, viz., whether, "on a balance of advantages and disadvantages it pays to have confessions recorded at all, before the trial commences except in very special circumstances and by order of the District Magistrate," I have the honour to state as follows.

I must premise that I speak from the point of view of a barrister for 21 years and a Judge of the High Court for nearly eleven years in the Town and Island of Bombay only.

I am strongly of opinion that if the recording of voluntary confessions were done away with the Course of Justice throughout this Presidency would be most seriously interfered with. I have sat frequently on the Appellate Side; so am speaking with authority, as to that and the original Side of the High Court.

For many years I have thought that the current views as to pressure and torture by the police are much exaggerated. With some Judges the idea is almost a "Fetish." It is common knowledge that the ordinary native in India will, when he is in a strait, *primâ facie* say what he thinks will please the Sahib. This peculiarity often leads them to say things which the inexperienced addressee styles untruths but which really are not so. This I am convinced is the motive power at the bottom of a large percentage of confessions. The next point is that where more than one person are engaged in a crime and are arrested each one fears that the other will tell on him and he wants to be first in the field with his statement.

This is a striking feature in dacoities and similar crimes.

Another thing that prompts the majority of confessions is that the accused thinks that by confessing he has a better chance of the Sirkar taking a more lenient view of his case. I am absolutely convinced—after having given many hours' reflexion to the matter—that to do away with confessions would prevent the greater number of serious offences being detected at all. In the present state of unrest in India such a step would in my opinion be nothing short of a fatal error. Moreover, such a step would be a fatal blow to the prestige and position of the police in India who—looking at the late charges against them in Calcutta—have lately been seriously depreciated. It is their duty to detect crime and after all if an accused person is foolish enough to give himself away by confessing he has only himself to blame. At the same time, if I ever had a suspicion that a confession had been extorted by improper means I would insist on the fullest inquiry, and, if the offender were guilty, would punish him with the utmost severity.

With regard to the second point submitted in paragraph 4—

In my opinion a third-class magistrate is as qualified as one of a higher grade to take a confession. To deprive them of this power would, in my opinion, be to cast a certain slur upon them.

The sections of the Criminal Procedure Code and the rules are plain enough to the poorest understanding, and I would deprecate such an alteration as is suggested.

If it can be worked, I see no objection to ordering that, after his confession, the accused be not placed again in police custody.

In conclusion, I do not see how the Bombay rules can be improved upon, and would suggest that they be adopted *in toto* in all the other Presidencies and Burma.

(Signed) LOUIS P. RUSSELL.

The first question proposed in the letter of the Government of India "in connection with confessions is whether, on a balance of advantages and disadvantages, it pays to have them recorded at all, before the trial commences, except in very special circumstances, and by order of the District Magistrate." In my opinion, it will pay. Experience shows that in a large majority of cases, in which confessions have been recorded before trial, they have been retracted at the trial and that the retraction is due, where the accused is defended by counsel or pleader, to legal advice, and where he is not so defended, to his consciousness that, since he is going to be tried and is called upon to defend, the safest course for him is to let the prosecution prove its case and try his luck. What will happen, therefore, if the proposal in question passes into law, is that in almost every case the accused will not confess after trial has begun. And this result will have an unfortunate effect on the detection and punishment of crime in a country, where the first and greatest difficulty in this respect has long been felt to lie in the passivity of the people, who will not willingly come forward to help the police, to give evidence and bring a criminal to justice.

Further, the proposal is open to this objection that "special circumstances," under which alone it is suggested a confession should be recorded, is a vague term. No doubt the District Magistrate is, according to the proposal, to determine whether "special circumstances" exist. If what in some quarters is alleged is true, viz., that the police are corrupt and extort confessions, it will not be difficult for police officers to make out special circumstances and get the District Magistrate's order in almost every case. They have only to satisfy him that it is impossible to get independent evidence, because witnesses are reluctant to come forward. And such a case may easily be made out in a large number of crimes committed, having regard to the passivity of the people in this country. What District Magistrate will deem it expedient to refuse to give an order, if the police come and say: "Sir, it is so difficult to get to the bottom of this offence, unless you permit the accused's confession to be recorded. Or else the crime will go undetected?" Will the District Magistrate in such a case take the responsibility on himself and let the police shirk theirs on the ground that the District Magistrate has made the crime impossible to detect?

Such a proposal would be indeed welcome, and I should endorse, if all that has been alleged against the police at this day were either wholly or mostly true. I have no intimate knowledge of the state of things in this respect in the parts of India other than the Presidency of Bombay. Confining myself to this Presidency, I venture to think that the police to-day are an improvement on what they were, say, 15 or 20, or 30 years ago. In the first place, our policemen have been, generally speaking, drawn from among the people of whom they form a part socially. That gives them the advantage of local knowledge and sympathy. Secondly, corruption is very much less now than it used to be in the police, and the native police force in its higher grades is officered by men better in point of education and enlightenment than their predecessors of, say, a quarter of a century ago. Thirdly, the severity with which policemen who have been found to have extorted confessions are punished by the Courts has, I believe, proved a great deterrent. In this Presidency, at any rate, I have observed during the period of my judicial experience, that there has been no remissness on the part of those at the head of the police to bring to justice police officers found torturing accused persons for the purpose of extorting confessions. And in this connection I should call attention to the significant fact that during these three or four years, though in and outside the House of Commons grave charges have been made against the police and they have been assailed, responsible police officers at the head of the Department have not been slow to detect and bring to justice cases of police extortion. This shows that there is a wholesome feeling growing in the police force, that its higher officers are alive to their responsibility, and are not given to shielding their department, where public interests and welfare are concerned.

It has been remarked in some quarters that the readiness with which illiterate and ignorant persons accused of crime confess in a large number of cases at the beginning of police investigation and retract the confession later on, when trial has commenced, shows that those

confessions are, generally, the result of police torture or influence. This remark ignores one fact which is patent to any one who knows the character of our people, especially the illiterate and ignorant portion of them. In ordinary life we find that when a servant is suspected of anything wrong, he will first deny, but after a little questioning he will give evasive answers, and at last admit. The fact is our people cannot successfully conceal their acts or motives. Hence it is that when a man who has committed a crime is arrested, he will, after a little questioning, make a clean breast of it. The unsophisticated man in this country may be given to lying, but he does not know, because he has not learnt, the art of persisting in his lie and keeping his own counsel so as to mislead others for any length of time.

If these facts are borne in mind, I think Government will perceive that it will not conduce to the better administration of justice to do away with the recording of confessions except after trial has commenced. Such a restriction will hamper justice and only succeed in promoting crime.

Nor can I approve of the proposal to forbid absolutely the production of prisoners before magistrates of the third class and to give power only to the magistrate having jurisdiction in the case, or at least to a first class, or specially selected, second class magistrate. What is the complaint against magistrates of the third class? They are no longer the inefficient men that their predecessors years ago were. They are drawn from the educated classes; they know the people. And if a magistrate, whatever his class, knows his duty, he can by careful inquiry of the prisoner brought to him, after taking all prudent and necessary precautions, find out whether in confessing, he is speaking voluntarily and telling the truth or is telling a story manipulated by the police. All depends on the kind of men chosen as magistrates, not on the class or grade they occupy. I venture to think our magistrates of the third class are upon the whole intelligent men who know what it is to record a confession and what responsibility it entails.

As to the proposals to make it an absolute rule that once a prisoner has confessed, he should in no circumstance be given back into police custody, and that before a confession is recorded, an accused person should have spent at least one night out of police custody, I have to say this. All such rules are good and will serve as useful safeguards, so far as they go. But it should be remembered that our Courts in dealing with confessions look to *all* the surrounding circumstances and act upon them only when they are satisfied that there has been nothing *suspicious* about the conditions in and under which a confession was recorded. If a few rules by way of restrictions are made, some magistrates and judges are apt to think that that is all they have to look to before accepting or rejecting a confession. The matter is one which after all has to be left to the sound discretion of the Court. Our Evidence Act has wisely provided that a Court should not act upon or admit as evidence a confession which *appears* to it to have been extorted. The use of the word *appear*, as contrasted with the word *proved* in the Evidence Act, shows how large a discretion is given to the Court. And whatever rules are made, however fine they may look on paper, all must depend on the one hand on the soundness of judgment of those who administer justice and on the personnel of the police force on the other. It is improvement in these directions that alone can effectually remove such abuses as exist. Those abuses have lessened considerably owing to the improvement made in those directions.

(Signed) N. G. CHANDAVARKAR.

September 18th, 1911.

The only question in this letter from the Government of India on which I hold a very definite opinion is the question "whether, on a balance of advantages and disadvantages, it pays to have confessions recorded at all." I am decidedly of opinion that it does pay, in the sense that it materially aids what I conceive to be the principal object of criminal law and procedure, namely, the detection and punishment of offenders. I would not object to any reasonable method of still further safe-guarding confessions, but I am of opinion that to rule them all out as inadmissible in evidence is quite unnecessary and would be little short of disastrous.

2. If that heroic step was ever to have been taken, it should have been taken many years ago. There is no necessity for it now in the Bombay Presidency, where, as I believe, police oppression in extorting confessions is already of rare occurrence, and is every year becoming rarer.

3. It is worth observing that in this country, so far as my observation goes, there is virtually no public opinion in favour of the law as against the individual criminal: that he is "a poor man with a family" or "is not likely to do it again" is popularly a grave and serious argument for the offender's escape. And I cannot doubt that to a large number of the persons who conduct the campaign against the police and confessions it is a matter of serene indifference whether offenders against the criminal law go unpunished or not. That, however, is not a view which is possible to a civilised Government responsible for law and order; such a Government cannot lightly throw away a useful weapon in a country where their armoury against crime is necessarily meagre and imperfect.

4. That such is in fact the position of an Indian Government is manifest; the causes operating to produce this effect are, or should be, so obvious to anyone discussing the problem that I will allude only to one of them. Our criminal law, which (for historical reasons quite apart from India) is extraordinarily tender to an accused person, depends for its success on the realisation of the underlying assumption that the citizen is willing to help the State, willing to give information of crime brought to his knowledge, willing to give evidence in Court against the accused. This assumption is grotesquely untrue in India, where (I speak as my experience suggests) the only willing witness is the false witness or the personally interested witness. That is one great and constant difficulty in the way of the police in this country, where the sense of any communal interests has not yet developed.

5. There are many other difficulties equally familiar. I have no time to refer to them, nor should it be necessary to do so. It is obvious, I think, that if, in the hands of an experienced

magistracy and judiciary, confessions are of real assistance in securing the punishment of crime, they ought not to be abandoned. On this point one can speak only from his own experience: my experience is that in numerous cases the existence of a confession which, though afterwards retracted, was, to my mind, clearly voluntary and true, has turned the scale, enabling me, with clear conscience and convinced mind, to convict the offender of his guilt.

6. I entirely deny that considerations adduced from English life and English characteristics can properly be appealed to as guides in this matter. In England, it is constantly said, the criminal generally does not confess. Quite so. It is not the English way (if one excludes special crimes of passion). But I believe that the normal Indian is far more prone to confess. I believe that, conscious of his own guilt, and suddenly confronted by authority, specially if that authority be armed with the smallest piece of apparent proof, the Indian is apt to collapse and confess, where the Englishman with centuries of different training behind him would harden his heart and make no sign.

7. For these and many similar reasons, including the skill and trustworthiness of our superior magistrates and our judges, I should record my vote decidedly against the proposal to make all confessions inadmissible.

8. But I quite agree that no effort should be spared (as, I believe, none is spared now) to drive home to the Indian police constantly and continuously that their first business is to work for the collection of evidence, not for the obtaining of confessions. I would agree even with the Meerut rule that a confessing prisoner should not be taken before a magistrate to have his confession recorded until he has been examined by the Superintendent of Police or his Assistant; indeed my own opinion has long been that, in the case of any confession of any serious offence, the intervention of a gazetted officer of police might with advantage be more frequent than it now is.

9. I also see no objection to the proposal that the power to record confessions should be reserved to first class magistrates or the magistrate having jurisdiction in the case.

(Signed) S. L. BATCHELOR

14th September, 1911.

NOTE.

The Government of India have ascertained that the Hon'ble Chief Justice Sir Basil Scott entirely agrees with the opinion recorded by the Hon'ble Justice Batchelor.

I am and for the last twenty years have been strongly of opinion (*a*) that retracted confessions should be excluded altogether or (*b*) that we should delete section 24 from the Evidence Act. As the law stands Sessions Judges in the mofussil are required to do violence to their conscience or intellect every time they admit a retracted confession.

2. For every Sessions Judge of any experience, who knows the native, would upon rigorous self examination, I think, admit that the average mofussil criminal would never confess if left entirely to himself. In fact he confesses literally in shoals. The Sessions Judge of experience who knows the mofussil police as well as he knows the native, in his heart knows very well WHY.

3. It is, in my opinion, safe to say that, excepting violent crimes, what I call passional crimes, when the murderer is half mad, or actually proud of what he has done, all other retracted confessions have been directly or indirectly induced by improper means. It is impossible within the limits of a readable note to exhaust the reasoning by which I hope I could convince any reasonable and unprejudiced man of the certain truth of this conclusion. Where actual torture is not used, the widespread belief that it ordinarily is used upon obstinate suspects, and the knowledge that it will be used, may induce a number of criminals who would not otherwise confess to do so in anticipation of the methods they dread being employed upon them. This is as far as any reasonable man who is acquainted with the conditions prevailing in the remoter parts of the mofussil, would go in the way of concession to those who believe that all the confessions made by prisoners while in police custody and uniformly retracted at the Sessions trial, are voluntary. And I may add that the opinions of Judges whose experience has been restricted to the criminals and police of the Presidency towns, is relatively valueless on this point. They do not know and cannot know what goes on in the mofussil. I feel that I must enter this protest because I anticipate that judged by numbers only, I shall be in a minority, if not altogether alone, amongst my learned brethren of the High Courts. I have devoted much thought to this subject for many years, have written much upon it, and have had ampler opportunities than most of my colleagues for gaining experience at first hand.

4. Those who contend that if we abolish retracted confessions we might as well abolish the Penal Code really mean that it is necessary to admit confessions that have been improperly induced. I am not concerned now with that point, though as I began by saying this is the only logical alternative to excluding retracted confessions altogether. But let us be frank about it. Further, I dispute the broad proposition. I deny that it is true. I believe that after a year or two, we should be able to convict as many accused persons without the need of retracted and deeply tainted confessions, as we are now able to do with that questionable aid. I go further, I believe we should convict more. First, because a retracted confession always has a most damaging effect upon a prosecution where a case is tried by jury. Next, because by excluding this time-honoured and much-valued weapon, we should put the police on more intelligent and vigorously prosecuted enquiry. They might be expected by degrees to become more efficient in that department of their duty in which, in the mofussil, they are now most backward—Detection.

5. The average low-caste native of this country is not by common consent addicted to the truth. Why is it that the average criminal who is drawn from this class, should suddenly show himself a marked exception and volunteer the truth . . . . to the police . . . . in a matter where he is most vitally interested in concealing it. Why should the most untruthful people in the world become in one set of conditions, and one only, the most confessing people in the world? And why, again, should this phase coincide precisely with the period during which they are helplessly at the mercy of the mofussil police? Surely the answer is only too plain. With respect to those who allow themselves to hold and express the opinion that the native of India is "prone to confess," I must say emphatically that in my judgment such a generalization cannot be sustained. It can only be supported by referring to the disproportionately large number of confessions supplied by our criminal courts, and assuming that these are all voluntary. It is hardly necessary to point out, that this is begging the question. I answer shortly that these confessions are not voluntary, and therefore do not afford any proof that the native is prone to confess.

6. The theory of moral collapse much in vogue with those who contend that these retracted confessions are voluntary, is as inadequate as, in my opinion, it is absurd. The average native criminal is utterly devoid of nerves, in the Western sense, and left to himself would certainly not suffer from any "moral collapse" merely because he was arrested upon a charge which he knows could not be brought home to him without his own assistance. What he does suffer from is sheer, well-grounded terror of what may be and in all human probability is in store for him, if he refuses to confess when the police exhort him to do so.

7. It is a commonplace that the conditions of police work here differ widely from those prevailing in England. Here the police get hardly any assistance from the people themselves. At home everyone who can is ready and willing to help the detection of crime. The villager dreads being involved in a criminal case, almost as much as being accused of having committed the offence. It means that he may be dragged away from his fields for weeks and kept hanging about Magistrates' and Sessions' Courts, and exposed all the time to police pressure on one side, and the pressure of personal influences on the other. The remedy for this might be found in local assizes, bringing the trial of local crimes to the doors of the people where they were committed. But from a theoretical point of view, this kind of argument resolves itself into this. We cannot detect crime unless criminals confess; therefore let us make them confess, somehow.

8. I accept my brother Hayward's practical suggestion. If for no other reason, because it would prove convincingly and dramatically that I am right upon all my main grounds. If confessions were so restricted, there would be none. I except always those rare cases of passional crime to which I have once referred. And in those cases the confessions are almost always unnecessary. *Res ipsa loquitur*. So that where confessions are genuine we find that they are superfluous. They ought to be superfluous in all cases.

9. It may be objected that if the police were stopped from extorting confessions, the prisoners would be in no better case. The police would still torture to extort information. That is true. It would be true at least for a year or two after all retracted confessions were excluded. But gradually we might hope to find the police training themselves in detective work and relying less and less upon the traditionary disreputable methods. In England the police do not rely on confessions; as a rule they do not want them and would rather be without them. Yet they obtain convictions. So it would be in India once they were shut off from this easy road to getting them. It is needless to dwell on the farce which is gone through before the third class magistrate, intended to guarantee the voluntariness of the confession. Everyone knows that it is a farce and that it guarantees nothing.

10. I have no time to examine the persistent confusion of thought which would make the believed truth of a confession, justification for its extortion. Doubtless many true confessions are extorted. But what we are concerned with is the grave reproach cast upon our present system by the need of having recourse to such ways of eliciting the truth. I am most strongly in favour of excluding retracted confessions altogether from Judge and Jury at Sessions trials. Either that or abandoning the rather thin and naive belief that they have all been voluntarily made, and frankly acknowledging that we do not care how they were obtained as long as we believe them to be true. I could adduce a great many more reasons in support of my own position, and in refutation of all arguments to the contrary, but I could not do that satisfactorily within the limits of a note. What I have said will be enough to indicate one or two main lines of reasoning that, followed up, must necessarily lead to a true conclusion.

(Signed) F. C. O. BEAMAN.

P.S.—I wish to guard myself against being supposed to have attacked in a controversial spirit any of the opinions or reasons of my learned colleagues. I have not seen any of their minutes. I do not know what views they have expressed or what reasons they have given. Mr. Hayward informed me orally of his suggestion.

(Signed) F. C. O. BEAMAN.

I think the time has fully come for insisting that the main object of a police investigation should be the collection of evidence and not the extraction of confessions. I should therefore be in favour of limiting the powers of recording confessions to first class magistrates at headquarters provided with a prison in the independent charge of the Jail Department; or providing that no confession should be recorded until the prisoner had been at least 24 hours in the independent custody of the officers of the Jail Department; and of prohibiting remand to police-custody after confession except upon the orders of the District Magistrate.

(Signed) M. H. W. HAYWARD.

9th September, 1911.

Enclosure 4 in No. 1.

Letter from the Honourable Mr. C. J. Stevenson-Moore, C.V.O., I.C.S., Chief Secretary to the Government of Bengal, to the Secretary to the Government of India, Home Department, No. 1347-P.D., dated the 28th May, 1912.

I am directed to refer to Sir A. Earle's letter, Nos. 781-790, dated the 12th July, 1911, in which this Government was asked to examine the regulations in force in Bengal, regarding the procedure to be followed in the matter of the production before magistrates of confessing accused persons and the recording of their confessions by such magistrates, and to suggest, in consultation with the highest judicial authorities, amendments, where necessary, of the existing rules after a consideration of the following specific questions :—

(i) Whether, on a balance of advantages and disadvantages, it pays to have confessions recorded at all before the trial commences, except in very special circumstances, and by order of the district magistrate;

(ii) Whether, in case it is not considered possible to stop altogether the recording of confessions before trial on the motion of the police, the safeguards which already exist, cannot be made more stringent with a view to maintain the voluntary character of confessions;

(iii) Whether it is possible to withdraw the power of recording such confessions from magistrates of the third class and to give it only to the magistrate having jurisdiction in the case, or at least to a first class or specially selected second class magistrate;

(iv) Whether it is not feasible to make an absolute rule that once a prisoner has confessed he should in no circumstances be given back into police custody;

(v) Whether it might not be possible to lay down that, before his confession is recorded, an accused person shall have spent at least one night out of police custody; and

(vi) Whether it might not be possible to introduce in Bengal the Bombay procedure of questioning a confessing prisoner, when first produced after arrest, as to whether he has suffered ill-treatment at the hands of the police.

2. Selected officers both of the executive and judicial branches of the service and the High Court have been consulted in the matter and their opinions have been subjected to careful scrutiny and consideration by the Governor in Council. I am now to enclose a copy of the High Court's letter on the subject and to submit the views of His Excellency in Council on the suggestions made in the letter under reply.

3. In regard to the first question I am to say that the weight of opinion and notably that of the Honourable Judges of the High Court is against the exclusion from evidence of confessions recorded under Section 164 of the Criminal Procedure Code. His Excellency in Council has given the matter his careful consideration and agrees with the High Court that a man alleged to be implicated in a crime should be permitted to make any statement he likes before a trustworthy and experienced Magistrate. The Governor in Council does not deny that abuses exist and that from time to time cases occur in which confessions are alleged or proved to have been obtained by means of violence or threats of violence and in which magistrates who have recorded confessions have, by neglect of the rules on the subject and by want of the exercise of proper care and intelligence, failed to detect that the confessions were not made voluntarily. It is important, however, not to lose sight of the first principle involved. The object of criminal proceedings is to find out whether persons accused of offences have in fact committed them or not and this result can best be arrived at by examining all the evidence obtainable on the subject. No one is able to give more conclusive evidence as to what was done than the person who did it and any general rule to exclude that person from giving the assistance which he is obviously in a position to give amounts to an artificial obstruction to the attainment of the object for which the whole judicial system has been created. His Excellency in Council, therefore, thinks that the proper course is not summarily to rule out a most important class of evidence, least of all without the support of the high judicial authorities who habitually scrutinise all evidence with the utmost vigilance, and show the greatest anxiety to secure fair play for accused persons, but to try to eradicate such

abuses as are known to occur. I am also to observe that the proposals of the Government of India in this matter relate solely to the judicial use of confessions and are not likely, in the opinion of the Governor in Council, to provide a complete remedy for the disease. Most police officers know that a confession is chiefly valuable for the clues which it provides and an unscrupulous police officer in search of clues would not be deterred from ill-treating an accused person by the fact that the accused's statement would not be placed on the record as a confession. His Excellency in Council, therefore, would deprecate the introduction of any such rule as that suggested by the Government of India, but he thinks that steps should be taken to strengthen the existing rules by the provision of further safeguards with a view to maintain the voluntary character of confessions.

4. The following are some of the measures, which commend themselves to His Excellency in Council as likely to be helpful in attaining this result. It should be strictly laid down that at the time when a confession is about to be recorded, the officer who brought the confessing prisoner in custody must not be in evidence at all. Again the recording of confessions in open Court during Court hours should be prescribed as the correct practice only to be departed from in exceptional circumstances. Further before recording a confession the magistrate must impress on the accused that he will not be returned to the custody of the officer who arrested him or brought him before the magistrate, and that he has nothing to fear at his hands. Finally to impress on magistrates the importance of satisfying themselves as to the voluntary nature of the confession, the certificate to that effect should not be printed as it is at present on the form on which such statements are usually recorded but should be filled in by hand in each case.

5. The Governor in Council accepts in the main the suggestion of the Government of India that confessions should be recorded only by 1st class magistrates. He would only modify it by adding that authority should be given to any Sub-divisional Officer as such, whatever his magisterial powers, to record confessions within his sub-division, since it is sometimes necessary to place a civilian officer not yet endowed with the powers of a magistrate of the 1st class in temporary charge of a sub-division and difficulties would arise if such an officer had not the power to take a confessing prisoner's statement.

6. In regard to the fourth suggestion made by the Government of India the conclusion arrived at by His Excellency the Governor in Council is that, once a prisoner has confessed he should not ordinarily be given back for the verification of his confession except to the charge of a magistrate, but that, when no magistrate is available, the prisoner may be placed in custody of a police officer not lower in rank than an Inspector of Police of the 1st or 2nd grade who has had no previous concern with the accused in the case. His Excellency in Council does not think it feasible to prohibit absolutely the remand of a confessing accused to police custody. Such a provision might seriously hamper a perfectly honest investigation and a rule on the lines proposed supplemented by the conditions of Section 167, Criminal Procedure Code, should be effectual in preventing abuses.

7. The Governor in Council is prepared to accept the proposal that before a confession is recorded an accused person should have spent at least one night out of police custody, subject to the addition of the words " where practicable." This slight modification seems necessary to provide for cases where a confessing accused is taken before a sub-divisional officer when he is out in camp and far removed from headquarters.

8. Finally, with regard to the last suggestion made in your letter under reference, I am to point out that the Bombay rules do not seem to provide as is stated for the questioning of a confessing prisoner when first produced before a magistrate as to whether he has suffered ill-treatment at the hands of the police and such a procedure is in the opinion of the Governor in Council to be deprecated since it would invite complaints. His Excellency in Council considers that the requirements of the case would be met by the imposition of a rule directing that the Jail Superintendent must examine medically a confessing prisoner immediately on his admission to the Jail as a matter of routine and that if any marks are discovered the medical report should be forwarded at the same time as the confessing prisoner to the magistrate, who will record the confession.

Annexure.

Letter from R. L. Ross, Esq., I.C.S., Registrar of the High Court of Judicature at Fort William in Bengal, Appellate Side, to the Secretary to the Government of Bengal, No. 75, dated the 29th February, 1912.

I am directed to acknowledge the receipt of your letter, No. 2844-Pl., dated the 24th August, 1911, with which you forwarded a copy of a letter, No. 781-790, dated the 12th July, 1911, and enclosures, from the Government of India in the Home Department, regarding the procedure to be followed both in the production before Magistrates of accused persons to have their confessions recorded, and in the recording by Magistrates of the confessions of persons so produced. You requested that the Government of Eastern Bengal and Assam might be favoured with the expression of the views of the Hon'ble the Chief Justice and Judges on the subject.

2. In reply, I am to say that the first question on which the opinion of the Court is asked is whether, on a balance of advantages and disadvantages, it is desirable to have confessions recorded at all, before the trial commences except in very special circumstances and by order of the District Magistrate. In the opinion of the Judges, the answer to this question should be in the affirmative. They think that any man who is alleged to be implicated in a crime should, if he so desires, be permitted to make any statement either admitting his guilt or explaining any facts or circumstances which appear to inculpate him, and to have that statement recorded by a trustworthy and experienced Magistrate.

3. The next point raised in Sir Archdale Earle's letter touches the safeguards which exist and suggests that they may be made more stringent. On this point the Court recommends that the statement made by an accused person should ordinarily be recorded by a Magistrate who has jurisdiction to try or enquire into the case. Only in the event of such a Magistrate not being available should a junior or an Honorary Magistrate be allowed to record it. No police officer who has been engaged in the investigation should be allowed to be present when the statement is recorded and only those officers who may be necessary to guard the prisoner.

4. The Judges think that the practice of verifying confessions should be carefully limited and should be confined to a verification of the facts which have been stated by the prisoner. Cases have been brought to notice in which the so-called verification has been used as a means of obtaining admissions to corroborate facts which have come to light after the confession has been made. This practice should be discontinued, and a verification for the purpose of amplifying a confession should not be allowed. A verification of a confession should be entrusted to an experienced Magistrate who should accompany the accused to the places referred to by him and his proceedings should be restricted to the verification and discovery of facts and local features which themselves either prove or disprove the truth of the statement. The investigating police officer should not be present at the time of the verification and only a sufficient police guard to prevent the prisoner from escaping.

5. Where the prisoner alleges that improper influence, physical or moral, has been brought to bear on him to induce a confession, the charge should be promptly investigated; and where physical violence is said to have been used, the prisoner should be examined at once by a Medical Officer.

6. In conclusion, the Judges desire to suggest that the best safeguard against the acceptance of an untrue confession improperly obtained will be found in the care and ability displayed by the Magistrate who is entrusted with the duty of recording it. They think that no advantage would be gained by a further elaboration of the rules in force in this province regulating the procedure to be followed after the prisoner has been brought into the presence of the Magistrate. The only essential is that the Magistrate who records the statement shall be an officer of intelligence and experience sufficient to enable him to determine whether it is a free and voluntary confession and not a statement which is the result of outside influence.

Enclosure 5 in No. 1.

Letter from S. P. O'Donnell, Esq., Secretary to Government, United Provinces, to the Secretary to the Government of India, Home Department, No. 1532 of 1912, dated the 8th May, 1912.

I am directed to reply to Home Department letter, No. 781-790, dated Simla, the 12th/19th July, 1911, on the question of the procedure to be followed both in the production before magistrates of accused persons to have their confessions recorded and recording by magistrates of confessions made by persons so produced. In that letter the Lieutenant-Governor was requested to examine the provincial regulations on the subject and submit a report with specific suggestions for amendment and to invite the views of the high judicial authorities.

The practice in this Province is contained in Orders 851 to 853, Manual of Government Orders, and in the Police Regulations :—

United Provinces Manual of Government Orders.

"851. Every confession which a person in police custody wishes to make should be "recorded by the highest magistrate short of the District Magistrate who can be reached in "a reasonable time.

"852. Magistrates should comply carefully with the provisions of the Criminal Procedure "Code with regard to the recording of confessions or statements made by accused persons.

"Section 164 requires that no magistrate shall record a confession unless, upon questioning "the person making it, he has reason to believe that it will be made voluntarily. No con- "fession, therefore, should be recorded until the magistrate has thoroughly satisfied himself "by all reasonable means that the person before him has not been subjected to improper "influences of any kind, and that the statement he is about to make will be his own free and "spontaneous statement. The magistrate should also, in addition to the memorandum pre- "scribed by the section, record the fact that he has duly questioned the prisoner for the above "purpose, and should further state briefly his reasons for believing the confession to have been "made voluntarily. In no case, if possible, should the police, who have been concerned in "the investigation or who have arrested the accused, be present while the latter is questioned "and his statement taken down: a note that this precaution has been taken should also be put "on the record.

"NOTE.—Care should be taken that the memorandum required by Section 164 is "added.

"853. In view of the special importance of securing a trustworthy and correct record of "any confession made in cases of organized dakaiti, a confession by one of a gang of dakaits "should, wherever the circumstances permit it, be recorded by an experienced and well- "qualified officer. The task requires patience and judgment, and instances have occurred of "its being inefficiently performed. Confessions in important cases of dakaiti made under "section 164, Criminal Procedure Code, should, therefore, be recorded by the District Magistrate "or by a European magistrate of some standing, preferably the joint magistrate of the district "in whatever part of the district the dakaiti may have taken place. The same principle may "with advantage be observed in regard to other serious criminal cases."

Paragraph 111, *United Provinces Police Regulations.*

"Before having a confession recorded it is advisable to test the truth of it; if not sup- "ported by strong corroborative evidence it may be of little value in court though recorded "before a magistrate. The main use of a true confession is to determine the direction of the "investigation.

"Every confession which a person in police custody wishes to make shall be recorded by "the highest magistrate short of the District Magistrate who can be reached in a reasonable "time. The higher the rank of the magistrate recording a confession, the greater is its value "in evidence."

2. I am to enclose copies of the opinions of the Honourable Judges of the High Court and of the Judicial Commissioner and of the Additional Judicial Commissioners of Oudh and to state the views of His Honour upon the subject.

3. I am to draw attention to the following remarks in the resolution on the work of the police in the United Provinces in 1907:—

"The Lieutenant-Governor's experience from the cases that have come before him on "applications for remission or commutations of sentence strongly bears out the view that "investigating officers too frequently overlook the necessity of obtaining evidence to corroborate "facts ascertained from the confessions made by accused persons. The practice ordinarily "followed seems to be to endeavour to get some admission from the accused person at as early "a stage in the investigation as possible. Once this has been obtained the investigating officer "is apt not to worry himself too much in making an exhaustive investigation: at some later "stage of the proceedings before the courts the accused person withdraws his confession. "Nothing could be more unsatisfactory than this system of investigation which begins at the "wrong end. The proper course for the investigating officer to pursue is to test every possible "theory for the commission of the crime by investigating and analysing every fact that becomes "available. If, as the net is drawn closer round an individual by the ascertainment of facts "that bring the case home to him he elects to confess, the confession adds confirmation to the "evidence already collected. But the process of beginning the case by securing some admission "from an accused person instead of first endeavouring to procure all the direct or circum- "stantial evidence that may be available is certain to shake the confidence of the courts in "the results of the investigation by the police. In the Lieutenant-Governor's opinion there is "no matter connected with police administration that demands reform more urgently than "this."

The following passage occurs in Mr. Trethewy's report on the police administration in the United Provinces in 1909:—

"It is very hard to eradicate the tendency of subordinate police officers to rely too much "on confessions. This is a question which has engaged the earnest attention of the Deputy "Inspectors-General and myself. I have gone through the proceedings in many cases leading "to acquittals of important offences, such as dakaiti and murder, in order to look out for "defects in the action of the police and can say that most superintendents are now alive to the "necessity of exercising caution before allowing a confession to be recorded and accepted as the "basis of the investigation. Mr. H. G. Richardson and Mr. B. M. Hamilton may be specially "mentioned as taking great pains in this direction. The Magistrate of Meerut remarks: 'I "'am rapidly coming to the opinion that it would be better for police work if confessions were "'entirely inadmissible in evidence. The tendency to try and get some sort of a confession "'and then to build up evidence around it seems inevitable. Undoubtedly the cleverer "'criminal now realizes that all he has to do to ensure his comfort when tackled is to confess; "'and that he is practically certain of acquittal when he retracts later on. I have long ago "'stopped tahsildars or local magistrates from recording confessions.' The Superintendent "of Police at Meerut has issued an order that no confessions are to be recorded till the accused "has been produced before him. The Commissioner endorses the views of these two officers

"as to the harm done by confessions. These opinions and orders seem sound as applying to "the kind of confession obtained during the course of an investigation, and when a gazetted "officer supervises the proceedings of the police in which a person has confessed it is certainly "advisable that he should see the accused apart from the subordinate police and question him "carefully to determine whether his statement is true. There is however another kind of "confession often made in murder cases, especially when the motive of the crime has been "jealousy; the murderer rushes off hot foot to the police station and reports all the circum-"stances of his guilt; on such an occasion there is no harm in getting his statement recorded "by the nearest magistrate, for if he is left to get cool he may think better of his original "intentions to welcome punishment. With reference to confessions of the first kind there "are two points which the police are prone to overlook. The first is that the confession, if "true, may be more useful as giving a direction to the course of the investigation than as a "piece of evidence; it shows the police which line to follow and where to look for proof. The "second is that especially in a dakaiti or gang case the confession should not be accepted as "a whole till all the details have been checked as much as possible. Many a prosecution has "failed because a confession, true in the main, is false in some particulars."

The comment made on this passage in the Government resolution was :—

"In this connection it will be useful to consider the vexed question of how far confessions "should be allowed to affect the work of the police. It is impossible to lay down more than "very general rules on this subject. It is absolutely necessary that the subordinate police "should be made to understand that no sort of pressure, direct or indirect, is to be put upon "persons to make them confess. His Honour sees no reason to suppose that there is anything "like a general practice of putting pressure upon persons to make them confess. It has been "broadly suggested in some quarters that such a practice exists, and some persons have gone "so far as to imply that the use of physical torture is by no means uncommon. The Lieu-"tenant-Governor is unable to find that the facts support these allegations. Occasionally it "is discovered that confessions have been improperly obtained; but there is no justification "for a general charge against the police of this province of using illegal and improper methods "to extort confessions. His Honour considers that it would be exceedingly difficult for torture "to be inflicted by a police officer in any case without certain risks of detection, and the fact "that in hardly any instance has such torture been proved goes to show that the allegations "of the persons who assert the existence of such a general habit are without foundation. Even "when a confession is made spontaneously and without any pressure being placed upon the "person making it, it frequently leads to subsequent bad work in investigation. Too often "an investigating officer considers that, once a confession has been obtained, the case is over. "The real value of a confession is the clue it gives for carrying on the inquiry on right lines. "If investigating officers would only recognise this fact less would be heard of cases failing "owing to confessions being retracted in courts. This is another matter in which supervision "by superior officers is essential. It is on their guidance of the subordinate police, their "intelligence in pointing out correct methods and their restraining the use of incorrect methods "that success in working out difficult cases must finally depend."

4. These remarks sufficiently indicate the place that the confession should in the opinion of the Lieutenant-Governor take in the work of investigation. The following instructions were issued in the form of a circular letter to all superintendents of police, dated the 15th July, 1908, by the Inspector-General of Police to impress the importance of these principles :—

"There is a growing tendency on the part of the police to deal with important cases of "murder and other heinous crimes solely on confessions or statements unsupported by material "or corroborative evidence. Instead of working on the information so obtained and procuring "corroborative evidence, investigating officers generally take immediate steps to have the "confession or statement recorded by a magistrate and then consider they have done all that "is required in the case. It constantly happens that such confession or statement is subse-"quently retracted and, there being little evidence available, the case breaks down in court.

"Superintendents of police must do all in their power to instil sounder methods of working "into their subordinates, and in order to ensure that this is done in all important cases, it is "desirable that the services of assistant and deputy superintendents should be freely utilized in "supervising investigations.

"The subordinate police will welcome the assistance that these officers can render them "in the handling of such inquiries and in any case this step will ensure that the investigation "is thorough and complete.

"Deputy Inspectors-General should, when inspecting districts, satisfy themselves that "these orders are carried out, and should note in their inspection reports the number of cases "in which assistant superintendents and deputy superintendents have been entrusted with "investigations.

"The subject should be noted on in the district annual reports."

There is reason to believe that the instructions given are being followed intelligently, and that the defects found in 1907 are disappearing.

5. The next point to be considered is the manner in which a confession should be recorded. I am to suggest that what is required is a record of a confession which will, in practically all cases, prove itself as spontaneous and unimpeachable, or the reverse. The two main objects to be attained are to guard against improper pressure being put upon the person confessing, and to secure that, if improper pressure has not been put upon the person confessing, he shall not usually be able to retract his confession successfully.

6. This subject has already been considered by Sir John Hewett, and in October, 1910, he examined closely the procedure adopted in recording confessions in this province.

The view which he took was that while it is for the Government to modify rules affecting matters of an executive nature, such as those regarding custody of under-trial prisoners, directions as to the manner in which judicial officers should exercise their functions as courts of justice can only emanate from the chief judicial tribunals. This is the view which is accepted by the Government of India in the letter under reply. Although the Lieutenant-Governor considered that a modification of the procedure under which judicial officers recorded confessions was for many reasons desirable, there did not then seem to him to be sufficient grounds on which he could approach the highest judicial authorities on the subject. Conditions have since altered, and now that the opinions of the judicial authorities have been taken and their views are found to be in general accord with his own, His Honour proposes to make certain suggestions to the High Court and the Judicial Commissioner with the object of regulating and improving the procedure in vogue.

7. The Lieuteant-Governor considers it desirable that a rule should be made that no confession shall be recorded except by a magistrate of the first class or specially selected magistrate of the second class, and that it should be recorded, whenever possible, by the magistrate who decides the case or commits the case for trial. This suggestion will be placed before the High Court and the Judicial Commissioner. The employment of a tahsildar as the officer before whom confessions are recorded appears to the Lieutenant-Governor to be usually undesirable. It is not likely that there will be any inconvenience caused by prohibiting tahsildars from recording such confessions. There are now only 96 out of 216 tahsils which are not on a line of railway, and in the circumstances it will not in most cases entail any appreciable delay if an accused person who desires to confess is conveyed from a tahsil to headquarters. It will further be suggested that the magistrate shall first examine the accused, noting whether he is suffering from excitement, whether he appears tired, worn-out or restless, and generally whether he is in a normal and ordinary condition for a man of his class, and examine him closely for bruises or other marks of injury. It will be also proposed that a medical man, if procurable, should also examine the man thoroughly, and that the magistrate should make a careful and detailed note, stating the result of his examination, and adding to it the written note of the medical examination, if any. The Lieutenant-Governor will further suggest that in no case should the police, who have been concerned in the investigation, or who have arrested the accused, be present while the latter is questioned and his statement taken down, and that the magistrate should, if possible, keep the prisoner for some time in his court, in other than police custody, after all police officers connected with the case have been excluded, so that any influence which may have been brought to bear on the prisoner may have a chance of being lessened or destroyed.

8. The Lieutenant-Governor will also suggest that questions in the following or some similar form should be put to the prisoner by the magistrate, the actual questions to be varied or amplified at his discretion subject to the necessary condition that every question that is put must be recorded.

Q.—Do you understand that you will not return again to or go near the police officers connected with this case?

Q.—Are you making a statement of your own free will?

Q.—Have you been ill-treated in any way by the police or anyone else in order to make you confess?

Q.—Are you afraid that anyone will do you an injury if you do not confess?

Q.—Has a police officer or anyone else told you that you will gain anything if you do confess?

Q.—Do you hope to gain anything if you do confess?

Q.—Has a police officer or anyone else given you anything you wanted to make you confess?

Q.—Do you understand the position clearly? You have nothing to hope or fear from the police officers you have previously been with. You are not going near them again. They cannot help you or injure you. I promise you nothing. I do not promise you a pardon, or any mitigation of sentence. I have no reason for supposing that you will be pardoned or have your sentence reduced if you are guilty because you are confessing. Do you wish to make a statement?

Q.—What have you to say?

The suggestion will continue that, after fully satisfying himself that the prisoner is desirous of making a genuine confession, the magistrate should proceed to record his statement, as nearly as possible *verbatim*, and to ask any questions necessary to explain or even to amplify the confession made and should carefully record every question put, and that finally he should append a certificate to the effect that all the instructions above suggested have been fully carried out, recording his reasons for any deviation from them, and stating fully his reasons for believing the confession to have been a genuine one, if such be his conviction. It will further be suggested that when the confession is over the magistrate will have it carefully read to the man, and then send him in custody of police officers other than those connected with the case to the nearest magistrate's lock-up.

9. The Lieutenant-Governor will consider separately the necessity for providing restrictions to the restoration of a confessing prisoner to police custody. It may be possible to arrange that in no circumstances will such a person ever remain in police custody after he has made a confession, with a provision that the police, if they wish, can interview him afterwards in the presence of the jail authorities, and that, further, when a man is sent up to confess and refuses to confess he will not be sent back to police custody. It may not, however, be possible to prohibit absolutely the retention of such persons by the police in any circumstances, but every attempt will be made, even if the prohibition be not made absolute, to reduce the occasions and the period of such detention to a minimum.

10. The question of confessions is connected intimately with the question of remands to the custody of the police. The Police Commission referred in paragraph 166 of their report to informal arrests. One of the abuses most difficult to eradicate from police work is the tendency of the police to keep a man in illegal detention and practically under arrest, and to describe this procedure as the detention of him under observation. The practice was formerly common. It has been on the wane in this province for years and is gradually (though slowly) dying out. Sir John Hewett is of opinion that if the legal authority to remand in police custody were taken away the practice would again increase. The time when torture is to be apprehended is not the time after the man has been placed under legal arrest. For it becomes easy to bring home proof against an offending police officer by marks of torture. The opportunity for torture arises before legal arrest takes place, and the abolition of such remands, so far from assisting the suppression of torture by the police, would be likely to interfere with the discovery and the proof of this form of crime. At the same time the Lieutenant-Governor considers that remands for as long as fifteen days are unnecessary in places where communications are as good as they generally are in the United Provinces, and he would like to see the law altered so as to limit remands to police custody to a period of seven days, except in more backward tracts and elsewhere, under the express orders of the District Magistrate. A modification in the provisions of the Code of Criminal Procedure will be required before this object can be effected, but as the question of amending the Code is now under the consideration of the Government of India, the present will be a suitable occasion for consideration of this proposal. It also seems desirable to Sir John Hewett that during such remands to police custody the superintendent of police should have the opportunity of satisfying himself by examining a person who is said to be willing to confess that his subordinates have not abused their powers in this respect. With the above modifications the power to remand to police custody may be retained with advantage. Amongst other reasons which can be advanced for its retention in a restricted form one stands out especially. If effect is to be given to the intelligent procedure suggested in the report of 1909 by Mr. Trethewy, to which reference has been already made, for the guidance of police officers in obtaining and recording confessions—a procedure which in the opinion of His Honour provides admirably for the prevention of false confessions and confessions obtained in an improper manner—a certain degree of latitude must be permitted to the police to retain accused persons on certain occasions in their own custody, and in many cases in which the superintendent of police is not at headquarters it will be necessary for investigating officers to retain the accused person in their own custody in order to bring him before the superintendent.

11. The Lieutenant-Governor is inclined to deprecate the addition of further restrictions. He is in absolute agreement with the learned Judges of the High Court and the Judicial Commissioner and the Additional Judicial Commissioners of Oudh that it will be inadvisable to forbid the recording of confessions before the trial commences, except in very special circumstances and by the order of the District Magistrate.

12. There is, the Lieutenant-Governor is convinced, sufficient reality in the confession to justify its retention generally, if recorded by a responsible magistrate, and provided that precautions are adopted to ensure that the accused is not exposed to ill-treatment or fear of ill-treatment by the police after he has made his confession or has refused to make a confession before a magistrate. The confession should, whenever possible, be recorded before the magistrate who will hold the inquiry or trial, but provision must be made for cases where this is not possible without unreasonable delay.

13. Sir John Hewett is satisfied after consulting judicial officers of all grades, and as a result of observing a very large number of confessions in judicial records which have come before him in applications for clemency or remission of sentence or otherwise, that the cases of genuine confessions by Indian criminals are comparatively numerous. It is largely a matter of temperament and environment. For one thing crimes of passion are much more common in India than in England. For another the influence of public opinion in an Indian village has more effect on an Indian villager than any public opinion in England on an Englishman. For a third the people are more emotional and superstitious. Given these causes it cannot be regarded as surprising that confessions are volunteered in this country to an extent which would seem hardly credible in England. But if comparison were made with a continental country, such as Italy, it would probably be found that the difference was less striking. Some of the reasons which make for a large number of confessions in India make also for their subsequent retractation. The mental condition which drives a criminal to unburden himself is naturally more intense amongst the unbalanced peasants who for the most part commit crimes of passion in this province. But the frenzy which induces such a criminal to exalt his crime, or the impulse which impels declaration to obtain a momentary respite, is succeeded frequently in such an organization by a reaction under the influence of which the instinct of self-preservation reasserts itself. Under the second influence retractation follows. In addition, the retractation of confession is greatly influenced in this country by the practice of placing under-trial prisoners in close communication with each other in the police lock-up. And once a man has been remanded to the jail lock-up inter-communication between under-trial prisoners and men under sentence becomes practically unavoidable whatever the regulations may be. In the circumstances retractation is not surprising, and does not in any way necessarily reflect on the genuineness of the original confession.

14. I am to add that Sir John Hewett is of opinion that, while the imposition of conditions of the nature suggested will afford sufficient protection for the present, the way should be left open for subsequent consideration of the advisability of altering the law to enable accused persons to give evidence in the same manner as they now give evidence in England. Experience in England has shown that the admission of prisoners' evidence has operated in the interests of the innocent, and in the furtherance of justice, and he sees no reason why action on similar lines should not be adopted with advantage in India, although it is likely that such a change in the law would be opposed here by much the same interests as opposed it in Great Britain.

15. The opinions of the high judicial authorities who have been consulted go to show that they attach no importance to the mere fact that a confession has been retracted, provided that it has been recorded in circumstances which safeguard its genuineness and its accuracy. It is not the experience of His Honour that the courts of this province attach no weight to a retracted confession *per se*, or that simply because it has been retracted they demand additional evidence which would in itself be sufficient for a conviction in absence of a confession. The courts of this province usually take confessions for what they are properly worth. They take retractions for what they are properly worth, and judge the value of a retracted confession on reasonable principles.

Annexure 1.

Letter from L. G. Evans, Esq., Judicial Commissioner of Oudh, to Secretary to Government, United Provinces, No. 2258/XIV—380, dated the 27th September, 1911.

With reference to your letter No. 2294/VI—629-1911, dated the 23rd August, 1911, I have the honour to submit the opinions of my colleagues and my own opinion on the points raised by the Government of India with reference to the procedure to be followed in the production of accused persons before magistrates with the object of recording their confessions and in recording such confessions.

Annexure 2.

Opinion recorded by T. C. Piggott, Esq., First Additional Judicial Commissioner of Oudh, dated the 5th September, 1911.

I would suggest that as a basis for any fruitful consideration of this question it is advisable first of all to arrive at a clear opinion as to the reason why any change in the existing law or procedure is considered necessary, or, in other words, as to the nature of the evils or abuses against which it is sought to guard. So far as my own experience goes, I do not think that there is any foundation for the suggestion that the lives or liberties of innocent persons are in danger under the existing law. I have occasionally come across cases in which the power of causing the confessions of accused persons to be recorded before the commencement of the enquiry or trial under the provisions of section 164 of the Code of Criminal Procedure seems to me to have been abused, and in which confessions so recorded are unreliable or altogether worthless as evidence. I think such cases are readily detected and exposed by the courts, and that a person who is really innocent of all connection with a particular crime runs exceedingly little risk of being convicted on the strength of a confession under this section obtained from him by improper means. The real danger to be guarded against, in my opinion, is the temptation which the existing state of the law offers to over-zealous, unscrupulous, or incompetent police officers. I do believe that serious failures of justice occasionally occur because a case has been sent up for trial mainly on the strength of some confession or confessions improperly obtained, irregularly recorded and of no evidential value when a more intelligent and straightforward investigation would have resulted in the production of evidence sufficient to bring home their guilt to the actual criminals. On this ground alone I am in favour of some modification of the existing procedure, though feeling strongly that the whole question is one of choice of evils and that it is inadvisable to hamper the police in their contest with crime, especially with organized crime, by more restrictions than appear to be absolutely necessary.

2. I would strongly deprecate the suggestion that the power of recording confessions before the commencement of an inquiry or trial should be entirely taken away from the Indian magistracy. Such a power appears to be a necessary complement and corrective of the special provision of law in this country which prohibits the tendering in evidence of any confession made by a person while he is in the custody of a police officer. It is particularly valuable in two classes of cases—

(*a*) in the investigation of organized crimes such as dakaitis;

(*b*) in connection with serious offences, such as murders, when it is obvious from the outset of the inquiry that a certain number of persons (as for instance a particular family, or the residents in a particular house or enclosure) must all of them know more or less of the truth regarding the commission of the crime, and yet it is almost impossible to bring home the guilt to any particular person or persons except upon the statements made by members of the family or residents within the enclosure.

In the former class of cases the police may often find in their hands at an early stage of the inquiry a member of the gang which committed the offence who is prepared, for one reason or another, to make a clean breast of the whole matter. The inquiry must proceed for the time being upon the information which this individual is prepared to give, and it is of the highest importance that any statement which he may make should be made by him under the sense of responsibility imposed by the knowledge that it could be proved against him in the event of his being put upon his trial. Moreover, in many cases it would seriously hamper the court in trying to arrive at the facts and to estimate the value of evidence subsequently produced, if it were not in a position to take evidence as to precisely what the informer, or the accused who first fell into the hands of the police, had actually stated at the time of, or shortly after, his arrest.

In the second class of cases to which I have referred I am confident that, even as the law now stands, persons are put forward to make to the police and to repeat before a magistrate statements more or less of the nature of confessions, but conveying a false or seriously distorted version of the actual facts. This is done to choke off further inquiry, to put the police on to a wrong track, or simply to offer up one out of several guilty persons as a sort of scapegoat to the vengeance of the law. Confessions made under these circumstances are almost always retracted, and I am confident that in some cases they are carefully calculated beforehand with a view to their intrinsic falsehood becoming demonstrable at the trial, and so involving the failure of the prosecution even as against the individual who had undertaken the risk of "confessing." If statements of this sort were permitted to be made to investigating police officers under guarantee that under no circumstances could they be proved in evidence at the trial, and with the knowledge that the persons making them could not be asked to guarantee their truth by repeating them in the presence of a magistrate before the inquiry by the police was closed, I am convinced that the difficulties of the police in dealing with this class of crime, serious as they are at present, would be very much aggravated.

3. I incline, however, to the opinion that the class of magistrates empowered to record confessions under section 164, Code of Criminal Procedure, might with advantage be restricted. I arrive at this conclusion with reluctance, and in spite of a feeling that such a measure will in some cases unnecessarily hamper an honest investigating officer in the conduct of a difficult inquiry. At the same time I find from experience that in the majority of the cases (if not in all) in which a confession recorded before the commencement of the inquiry is found to have been obtained by the use of improper methods, to have been irregularly recorded or to be otherwise worthless as evidence, it has in fact been taken by a magistrate whose qualifications and experience were not equal to the responsibilities thus laid upon him. Moreover, I think (and this is to my mind the principal advantage to be anticipated from any such change) that if the number of magistrates empowered to record such confessions were restricted, there would be some chance that any instructions which might be issued for their guidance under the authority of the Local Government or of the High Court would be brought to their notice and

would be observed with reasonable fidelity. The instructions issued by the various High Courts which are to be found printed in the appendix to the Government of India's letter under reply are mostly admirable, and it is obvious that very little difficulty would have arisen in this matter if any one of these sets of instructions had always been carefully followed by the magistrates for whose guidance it was intended.

4. I would suggest therefore an amendment of section 164 of the Code of Criminal Procedure confining the powers thereby conferred to magistrates who would be competent (apart from any question of territorial jurisdiction) to try or to commit for trial the offence under investigation. The practical result would be that confessions in important cases would be recorded only by magistrates of the first class, or by magistrates of the second class empowered to commit for trial by the court of session. Indeed, if it were thought more convenient to put the proposed alteration into this form my suggestion would be to restrict the powers conferred by this section to magistrates of the first class and magistrates of the second class, either especially empowered thereunder or empowered to commit for trial by the court of session. This would mean practically that the section would not be used except in cases of serious crime, and I do not know that any attempt is made to use it in petty cases as the law now stands.

5. I would further make it obligatory under the law that the magistrate should, before commencing to record any such confession, question the person making it in order to satisfy himself that it is being made voluntarily, and to put on record as part of the examination the questions so put by him to the accused and the answers returned by the latter. Pending some such alteration in the law I think these results might be secured by executive orders addressed to District Magistrates and police officers.

6. When this has been done, and as supplementary to these changes in the procedure, I think all High Courts might be asked to issue instructions as to the recording of such confessions, and that District Magistrates should be required to see that these instructions are clearly brought to the notice of the first and second class magistrates concerned. As regards the particular form of instructions to be issued, those shown in the Government appendix as issued under the authority of the Judicial Commissioner of the Central Provinces seem to me to meet the case. I should be disposed to require the magistrate to place on record the fact that no police officer conected with the investigation of the case or the arrest of the accused is present in the room, or even within sight or hearing of the accused, while the confession is being recorded; indeed, I think the examination ought to commence by putting this fact in the form of a question to the prisoner himself and recording his own admission of its truth. I should be prepared to draw up a certain set of questions which magistrates might be directed in every case to put to the accused before commencing to record his statement, and even to embody such questions in a printed form to be issued for the recording of confessions under section 164 of the Code of Criminal Procedure.

7. If anything more than this is required, I think it should take the form of instructions issued departmentally by the head of the provincial police. In order to make such instructions of any value it would have to be clearly understood that a deliberate breach of the same on the part of an investigating officer would be considered an unpardonable offence, that is to say unpardonable in the sense that some sort of punishment would in every case follow upon its commission. My own opinion is that if all investigating police officers could be got to understand once and for all that the obtaining of confessions in an improper manner, and getting them recorded under pressure, was an offence in the eyes of their departmental superiors, and that they would not be allowed to plead in defence or extenuation that they really got hold of the right man or that no conviction of the guilty persons could have been secured at all unless some individual had been induced to speak by the exercise of trickery or judicious pressure, we should hear very little in the way of complaints about confessions obtained before the commencement of an inquiry or trial.

Annexure 3.

Opinion recorded by B. Lindsay, Esq., Second Additional Judicial Commissioner of Oudh, dated the 5th September, 1911.

I have only a few observations to make on the proposals contained in the Government of India's letter.

(1) I do not think that it would be advisable to stop altogether the recording of confessions before trial.

(2) I would limit the power of recording confessions to magistrates who have been invested with powers to commit to sessions.

(3) I am of opinion that in these provinces generally magistrates do not take sufficient care to inquire into the circumstances attending the making of confessions so as to satisfy themselves that they are being made voluntarily. Before the confession is recorded there should be a full note made of the steps taken to ascertain the voluntary nature of the statement. I think it important, as laid down in some of the instructions, that the body of the accused should be examined in order to see if he has been subjected to any violence.

(4) I am in favour of the suggestion that before the confession is taken the accused should be allowed to spend a night out of police custody. And after the confession he should not again be remanded to police custody unless such a step is essential for the prosecution of the police inquiry.

(5) The law as to the admissibility of confessions against the person making them should be explained to the accused before he is allowed to make any statement and a record of this having been done should be made in the proceedings.

(6) I approve of the direction issued by the Bombay High Court regarding the noting of the date and hour of the commission of the offence and the date and hour when the accused first came into police custody. The accused should himself be questioned on these points.

(7) I also strongly approve of the direction in the orders issued in the Central Provinces that the magistrate is not to ask "fishing" questions. No questions should be put except those that are necessary to enable the accused to explain any statement already made regarding the meaning of which the magistrate may have doubt.

Annexure 4.

Opinion recorded by L. G. Evans, Esq., Judicial Commissioner of Oudh.

I agree generally with the notes made by my colleagues.

My experience is that it is fairly easy to ascertain whether a confession has in it any elements of truth.

Confessions made under police pressure can be detected if the circumstances under which they are made are considered.

Broadly stated true confessions come under two heads—

(1) confessions made by a criminal *immediately after* a crime, when he has committed a crime in the heat of passion and he knows he cannot get off undetected;

(2) confessions made by a criminal who has deliberately committed a crime, but who finds that sufficient evidence as to his guilt has been discovered by the police and his only hope of escape is to be an informer.

A striking instance of this occurred in a dakaiti case tried by the Judge of Gonda about fifteen months ago. A dakaiti occurred and by a piece of good luck the police got hold of overwhelming evidence against some six men, and then they all made desperate efforts to be treated as informers and gave good details of the affair. The genuine nature of these confessions was obvious.

The existing rules as to recording confessions are very good, but much more depends on the good sense and intelligence of the magistrate who records the confession, and for this reason I would restrict the power of recording confessions to first class magistrates only.

Persons who have confessed should not be sent back to the police, unless the magistrate certifies that such procedure is in his opinion absolutely necessary to complete the inquiry. Such certificates should not be given as a matter of form, but only after complete and careful consideration.

Annexure 5.

Letter from S. P. O'Donnell, Esq., Registrar, High Court of Judicature for the North-Western Provinces, to Secretary to Government, United Provinces, No. 6090, dated the 18th November, 1911.

I am directed to reply to your letter No. 2293/VI—629, dated the 23rd/24th August, 1911, enclosing a copy of a letter, Nos. 781-790, dated the 12th/19th July, 1911, from the Government of India, Home Department, with reference to the procedure to be followed in the production of accused persons before magistrates with the object of recording their confessions, and in recording such confessions.

(1) The Court are opposed to the suggestion "that the recording of confessions should be "prohibited except in very special circumstances and under the orders of the District "Magistrate." Whilst recognizing that the admissibility of confessions as evidence in a trial leads occasionally to grave abuses, they consider that a prohibition so rigorous as that proposed is, in the conditions obtaining in this country, undesirable and impracticable.

(2) They are entirely in favour, however, of the proposal that confessions should never be recorded by a third class magistrate. In their opinion confessions should, if this is not impossible, be invariably recorded before a first class magistrate.

(3) In practice difficulties, they apprehend, are likely to attend the enforcement of an absolute rule that a prisoner, who has confessed should, in no circumstances, be returned to the police. But in their opinion a prisoner who has been produced by the police for the purpose of having his confession recorded should not be returned to police custody without the special order in writing of a first class magistrate, and that whether he has or has not actually made a confession.

(4) The suggestion that before a confession is recorded an accused person should have spent at least one night out of police custody, has much in its favour provided adequate arrangements for the proper segregation in the lock-up of the accused person can be made. Where no such arrangements can be made the proposal is in the Court's view impracticable.

(5) The adoption of the Bombay rule that confessing prisoners should be questioned as to whether they have suffered ill-treatment at the hands of the police is not, the Judges think, likely in practice to be of much benefit. It is already the duty of the magistrate to satisfy himself that the confession is being made voluntarily and not as the result of ill-treatment, and the prescribing of particular questions to be put to a confessing prisoner might conceivably defeat the very object aimed at.

Enclosure 6 in No. 1.

Letter from the Hon'ble Mr. C. A. Barron, C.I.E., Chief Secretary to the Government of the Punjab to the Secretary to the Government of India, Home Department, No. 18-C., dated the 2nd December, 1913.

(Extract.*)

I am directed to reply to the letter of the Government of India, dated the 12th July, 1911, as to the safeguarding of accused persons who record confessions in criminal cases under investigation by the police. The opinions of the Hon'ble Judges of the Chief Court were obtained and I am directed to forward a copy of those opinions. It will be noticed that the Hon'ble Judges are unanimous in expressing the opinion that confessions are of great evidential value; that in the vast majority of cases confessions made by accused persons are strictly voluntary; and that no general inference can be drawn from the frequent repudiation of confessions at a subsequent stage of enquiry or trial that they were, in the first instance, extorted by torture or undue pressure of other kinds. The Hon'ble Judges differ somewhat as to the necessity for minor alterations in the existing instructions relating to confessions, but on the broad question of the adequacy or otherwise of the procedure at present prescribed in providing the necessary safeguards they are entirely at one. With this general conclusion expressed so confidently by the highest tribunal in the Province, Sir Michael O'Dwyer entirely concurs. The Lieutenant-Governor does not consider that it would be expedient to abolish altogether the recording of confessions on the motion of the police. The existing rules of the Chief Court and of the Police Department direct that such confessions should be recorded before the Magistrate exercising the highest powers, short of the District Magistrate, who can be reached within a reasonable time. Third-class magistrates are not allowed to record confessions unless in very exceptional circumstances, and resort to Honorary Magistrates is discountenanced. Magistrates who record confessions are already directed to enquire carefully from the accused whether any pressure or inducement has been brought to bear upon him, and it is their plain duty to examine the bodies of accused persons who make any complaint of personal injury. This duty it has never been alleged that Magistrates do not carry out conscientiously. Magistrates before remanding an accused person to police custody have to consider whether there are any reasons against this course, and ordinarily persons who refuse before a Magistrate to make any confession are not returned to the custody of the police. Those who do make confessions may be remanded to police custody if their assistance is required for the further investigation of the case, but are only so returned by written order of the Magistrate and for special reasons which should be recorded by the Magistrate. Such being the instructions already in force on the subject, the Lieutenant-Governor does not advise that any radical alteration should be made in them, except that he would be prepared to rule that confessions should usually be recorded only by the first or second class Magistrate having jurisdiction in the case, exception being made for a proper discretion being exercised by other Magistrates with equal powers in urgent cases. His Honour would therefore exclude third class Magistrates altogether, but would allow confessions to be recorded by specially empowered stipendiary Magistrates with second class powers and by specially empowered Honorary Magistrates exercising second class powers. Honorary Magistrates of the first class are rare in the Punjab and the powers are only conferred with the concurrence of the Chief Court on men of proved ability and experience. They are in His Honour's opinion perfectly fit to be entrusted with the duty of recording confessions. The Bombay rules referred to in paragraph 4 of your letter Nos. 781-790, dated 12th July, 1911, correspond closely to the Punjab rules on the subject, but the Lieutenant-Governor would add to the latter the Bombay rule prescribing bodily examination of the accused when there is any allegation or suspicion of ill-treatment. Such a procedure is in the interests of the police themselves, and will tend to prevent the allegations of ill-treatment now so freely, and generally falsely, made at a subsequent stage when the accused retracts a confession. In conclusion I am to express regret that as the result of a serious misunderstanding in the office the reply has been so long delayed.

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* The portions of this letter omitted related to subjects other than the procedure in regard to confessions. The letter, though here printed for convenience of reference as an enclosure of the Government of India's letter, was received by that Government after the latter was written.

Annexure.

Opinions recorded by the Honourable the Judges of the Chief Court, Punjab.

I am in favour of a confessing prisoner being taken at once to a magistrate of the highest class available in order that his confession may be recorded. There is usually no difficulty in finding a magistrate of the first class, and the duty of recording a confession should take precedence of ordinary duties.

It is a matter of common experience in this province that a prisoner, who confesses when he thinks denial is useless, withdraws his confession as soon as he has come in contact with experienced jail-birds, who advise him that the case against him is not as black as he thought. Record by a magistrate tends to defeat the subsequent withdrawal. This Court has directed that prisoners should not be taken to a magistrate of the third class if one of a higher class is available without unreasonable delay. Magistrates have been directed to satisfy themselves that the confession is voluntary. For this purpose an examination of the prisoner's person is sometimes advisable. I would leave this to the discretion of the magistrate. In my opinion confessions are usually made because the prisoner thinks denial hopeless or because his relations and neighbours know that he is guilty.

The 21st October, 1911. (Signed) A. H. S. REID, *Chief Judge.*

I agree generally with the remarks of the Chief Judge, but wish to add one or two observations of my own.

I do not think confessions are by any means so useless as the letter of the Government of India would infer, nor do I think that the police of this Province at any rate deserve that the inference should be drawn that torture is at least probable in all cases. I have come across some cases in which, in my belief, torture was to be very strongly suspected, but for one accusation of the kind which I have found to be true I have heard 99 certainly false. So far from my experience being that confessions "are adhered to," my own experience is that almost every confession true or false, is retracted the moment the accused gets access to hardened criminals. In one case before me it was in evidence that one accused said to another who was being bullied to confess "what a fool you are—confess—and retract it afterwards," and I well remember years ago a Deputy Inspector of Police saying to me: "Sahib, we have not much encouragement to treat prisoners well—whatever we do we are certain to be accused of torture." I know nothing of the police of the other Provinces. I know the police of the Punjab well, and though I have had, in the exercise of my duty, to say hard things of *individuals* in the force, I think they do not in any way deserve the slur which would certainly be cast on them if some of these rules were brought into force. If we show no confidence whatever in our police, who else is likely to show any?

I think that confessions should be recorded before the magistrate of the highest grade reasonably available, and that, if any complaint of ill-treatment is made to him, or at any time to any magistrate, then the magistrate should immediately examine the person of the accused. A prisoner brought before a magistrate to confess, and who *refuses* to do so, should not as a rule be allowed to go back into police custody. If he makes a confession which the magistrate is convinced is voluntary the objection is less, but it should only be allowed by special order. I think confessions properly recorded and bearing on the face of them the marks of *bonâ fides*, are of greater weight in most of the courts than either the Government of India letter, or the remarks of Messrs. French and Wallace would imply. Students of criminology all point out that confessions, so far from being unusual and not to be expected is the natural tendency of criminals of the "amateur" type, as most murderers in particular are. The principal precautions I recommend are:—

(1) Confessions only to be ordinarily recorded by magistrate of the first class.
(2) Magistrates should satisfy themselves that the confessions are voluntary.
(3) Accused persons brought up to have confessions recorded should not, except by special order after confession, be remanded to police custody, and *never* if they refuse to confess. The real danger of course is that accused persons should confess for fear of ill-treatment if they do not. I see the police point of view, but the police, when the accused has confessed to them and given valuable information, should consider whether most advantage lies in putting the accused up to confess, and so having to surrender custody of his person, or in the opposite course. I would not forbid the recording of confessions before trial.

The 24th October, 1911. (Signed) F. A. ROBERTSON, *Judge.*

I agree with my colleagues that the Government of India letter under-rates the value of the existing law and practice as to confessions. The law is sound enough and should be maintained. The abuses which come to light are so rare that no case is established for abolishing or even largely restricting the powers of Criminal Courts to consider duly authenticated confessions. The practice in the Punjab also seems to me generally sound enough. It was not always so, and some years ago I held the view now suggested that the District Magistrate's permission should always be obtained before allowing record to be made of a confession. In recent years so much attention has been paid to the subject, and the police so well understand their duties in the matter, and there has on the whole been so much improvement all round, that I no longer think reference to District Magistrates required, or worth the trouble and delay involved. In a highly criminal Province like the Punjab district, magistrates will never have the time to look into all confession cases closely enough to prevent their being anything more than a fifth wheel in the coach. Their advice is only required in special cases of importance, difficulty or doubt and in these they ought to be consulted by the District Superintendent of Police, without being tied up by further rules.

I agree that men sent to magistrates for confession should not be relegated to police custody whether they confess or not. Otherwise I would make no change.

(Signed) A. KENSINGTON, *Judge.*

I agree with my colleagues. My experience is that the cases of torture or pressure on the part of the police to induce confessions are rare, and that in by far the majority of cases the original confession is made voluntarily. In order, however, to minimise the risk of illegal action on the part of the police, I would support the suggestion that in no case should the accused person be relegated to police custody.

The 11th December, 1911. (Signed) H. A. B. RATTIGAN, *Judge*.

Though I am by no means convinced that a confession made by an accused person in the course of the police investigation in this country is of much evidential value, I do not think that the existing practice of recording such a confession should be done away with altogether. If it is recorded under proper safeguards, it may safely be treated as one link in the chain of evidence against the confessing accused; the weight to be attached to a confession so recorded is of course another matter, and it must vary according to the circumstances of each particular case.

I am certainly in favour of the proposal that ordinarily a confession should be recorded by a magistrate of the first class, for magistrates of lower grades do not usually realise the full responsibility of recording a confession strictly in accordance with the provisions of law on the subject, and the general impression seems to be that they take down the confessional statements of the accused persons as a matter of routine without satisfying themselves that they are made voluntarily and not as the result of pressure or torture on the part of the police. The instructions which have been issued by our own Court on the subject are, in my opinion, generally sufficient to meet the necessities of the case, but unfortunately in practice they are not strictly observed by the magistrates in the majority of cases, and that is one reason why complaints are rife as to confessions being improperly induced.

I also approve of the suggestion that an accused person who has once been brought to a magistrate to have his confession recorded should not be remanded to police custody, whether he has made a confession or not. I further think that it would be a salutary rule to lay down that an accused person who is willing to confess should be kept out of the custody of the police for a reasonable length of time before his confession is actually recorded by a magistrate, and the latter should expressly question him as to whether he has been ill-treated by the police.

The 15th December, 1911. (Signed) M. SHAH DIN, *Judge*.

The main points to be kept in view in dealing with the law as to confessions before trial are—

(*a*) that the investigation and detection of crime must not be unnecessarily and unduly hampered;

(*b*) that reasonable precautions must be taken to ensure that confessions are not improperly induced.

No doubt the second of these points is important, but I am inclined to think that in these humanitarian days the extreme importance of the first point is apt to be obscured. The task of detection of crime has always been difficult in the Punjab, and it is probably becoming more and more so as each year passes, and with a full sense of my responsibility I venture to express the opinion that the first point is, in the interests of the public at large, the more important of the two. I do not suggest that we should shut our eyes to the scandal and the cruelty of the illegal procuring of confessions; but before we proceed to make the work of the police more difficult than it already is, we should be quite certain that things are really as bad as they are said to be. Looking back on my eight years' experience as a magistrate, and 10 years as a Sessions Judge followed by seven years in the Chief Court, I have formed the opinion that things are not really as bad as they are now said to be, and it is my firm opinion that no case has been made out for further stringency in the rules and the law. Vigilance is required now as always, for rules and laws are apt to be overlooked and infringed, but any further tying of the hands of the police and any further depriving them of their natural weapons against the criminal will do more harm than good.

The suggestion of the Government of India that the recording of confessions before trial might be given up altogether goes much too far. According to all rational theories of relevancy of evidence, a voluntary confession before trial is relevant and extremely valuable, and the mere fact that sometimes it is hard to say whether a confession was voluntary or not is no sufficient reason for adopting the clumsy expedient of ruling out *all* confessions made before trial. To me it seems obvious that the proper course is to take reasonable precautions and then to leave the court trying the case to determine whether the confession was voluntary or not.

As regards precautions, I agree with my brother Robertson in his final summing-up, and especially as regards remand to police custody. Such remand should *never* be made if the prisoner has, on being placed before a magistrate, refused to confess, but it is obvious that there are many cases in which police custody of the prisoner is necessary for the proper completion of the investigation. I would go so far as to say that when a prisoner has confessed to a magistrate before trial, there is ordinarily no objection to his being remanded to police custody, and that this should always be done, if the police intimate its necessity, unless the magistrate sees some positive objection.

As regards questioning the prisoner and examination of his body before a magistrate record his confession, in practice magistrates do ask a prisoner if he has been ill-treated in any way and no doubt. if his suspicions are aroused, a magistrate will also look at the prisoner's body but I would deprecate the passing of a rule that he should make such an examination.

I entirely agree in Kensington Judge's rejection of the proposal that no confessions should be recorded before trial except by order of the District Magistrate. The delays and trouble would be intolerable, and the resulting good infinitesimal.

The 26th December, 1911. (Signed) D. C. JOHNSTON, *Judge*.

I agree fully with the opinion expressed by Johnston Judge.

The 2nd January, 1912. (Signed) W. CHEVIS, *Judge*.

Enclosure 7 in No. 1

Letter from the Honourable Mr. W. F. Rice, C.S.I., I.C.S., Chief Secretary to the Government of Burma, to the Secretary to the Government of India, Home Department, No. 602 T.—7 P.-2, dated the 1st June, 1912.

I am directed to refer to your letter, No. 781—790 (Police), dated the 12th July, 1911, relating to the procedure to be followed in the production before magistrates of accused persons to have their confessions recorded, and in the recording by magistrates of the confessions of persons so produced.

2. The first question stated in your letter was whether, on a balance of advantages and disadvantages, it pays to have confessions recorded at all before the trial commences, except in very special circumstances and by order of the district magistrate. And in support of the suggestion that the recording of confessions before trial might suitably be stopped altogether, it was alleged that while a genuine confession may possibly be obtained in the first excitement of an inquiry, the confession will frequently be retracted later, and experience shows that in such a case the Courts will demand such ample corroboration as would have been adequate for a conviction without the confession. The other question stated was whether, if it is considered impossible to go so far as to stop altogether the recording of confessions before trial, any, and if so, what additional safeguards should be prescribed. The Lieutenant-Governor consulted a number of officers of experience in this Province with regard to those questions, but His Honour does not think it necessary to trouble the Government of India with copies of all the correspondence; it is sufficient to note that only a small minority of the officers consulted were in favour of abolishing absolutely the recording of confessions before trial. The Honourable Judges of the Chief Court were included in that minority, and I am to submit a copy of their Registrar's letter* in which they " strongly recommend that recorded confessions made to any person in authority before the magisterial inquiry into an offence commences should be held inadmissible in evidence." I am now to set forth the Lieutenant-Governor's own opinion in the matter.

3. Sir Harvey Adamson is strongly of opinion that the recording of confessions before trial should not be stopped. A confession is evidence, for what it is worth; and the Lieutenant-Governor cannot admit that evidence should be intentionally ignored. His Honour indeed concurs fully in the opinion expressed in the following words by Mr. B. S. Carey, C.I.E., Commissioner of the Sagaing Division :—

> " On the other hand the use of confessions against an accused is a practice which common justice demands. Evidence should not intentionally be ignored. It would in my opinion be wrong to disallow confessions entirely. It is our business to teach and control the police by other means than by handicapping the administration of justice, and I disapprove of the proposal to do away with confessions, as being a departure from the plain course which justice dictates."

Nor can the Lieutenant-Governor admit the correctness of the remark in your letter, that in the case of a retracted confession the Courts demand such ample corroboration as would be adequate for a conviction apart from the confession; and Sir Harvey Adamson is not without experience on which to base his contrary opinion. During the last five years, in the Home Department of the Government of India and as Head of this Province, His Honour has had occasion to deal with every one of the numerous cases of sentences of death which come up for clemency to the Governor-General in Council and to the Local Government respectively; and His Honour had also previous experience as Judicial Commissioner of Upper Burma and as Chief Judge of the Chief Court of Lower Burma. Sir Harvey Adamson ventures to say, without fear of contradiction, that the High Courts, Chief Courts and Judicial Commissioners throughout India frequently find that retracted confessions have been voluntarily made, and having so found attach weight to them; and that in many cases in which the accused persons have been found guilty the independent corroboration was in fact not sufficiently ample to have led to a conviction without the confession.

4. The Lieutenant-Governor has no doubt that to a European mind the prevalence of confession in the East is very astonishing. As an instance of this, it may

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Annexure p. 42.

be remarked that for some time after the annexation of Upper Burma almost every prisoner, if guilty, at once confessed his guilt. Further acquaintance with civilisation and with our methods of administering justice has altered this practice in Upper Burma, but there can be no doubt that in Burma at the present day, and in India too, there is a strong tendency for the guilty to confess. In China, as the Lieutenant-Governor is informed, confession, however obtained, is a necessary antecedent to conviction. The following extract from a letter received from Lieutenant-Colonel D. J. C. Macnabb, I.A., Commissioner and Sessions Judge of the Magwe Division of Upper Burma, may suitably be given here, not only as illustrating the tendency of the Burman, when guilty, to make true confession, but also as affording proof that even retracted confessions are of value as evidence:—

> "If prisoners are willing and anxious to confess, they should be allowed to do so. All the senior Magistrates in this Division concur in the opinion that the great majority of confessions made in this Province are true and assist the administration of justice. In a Burman, after arrest, the natural revulsion of feeling following the commission of a crime, the effort of concealment or evasion of arrest, combined in a large number of cases with the knowledge that his whole village knows he is guilty, induce him to confess. Just as surely the realisation that such general knowledge will not avail to convict him, and the advice of advocates and relatives, lead him to retract later. In two cases during the past year I have convicted in murder cases on retracted confessions, and both convictions have been maintained in appeal."

Whatever may be the cause of the tendency to confess, there is certainly a great difference in this respect in the temperament of the Oriental and the European. Undoubtedly confession is prevalent in the East; and Sir Harvey Adamson thinks that few will deny that only a small proportion of the confessions made are due to police torture and illegal inducements. Whatever the cause, at one time or another there comes to many criminals the desire to confess. If taken at this psychological moment, the criminal produces evidence against himself which is the best evidence possible, being the evidence of his own lips. If not taken at the proper time, the criminal regains his normal confidence and decides to divulge nothing, with the result that evidence which might have been recorded against him is lost. Sir Harvey Adamson believes it to be beyond dispute that the detection of crime by evidence apart from confession is far more difficult in the East than in England. When a serious crime has been committed in England, the ordinary citizen is against the criminal and on the side of the police. Evidence is easily obtainable, for all persons who know anything material are ready to produce what they know. But in the East it is quite the reverse. Whether from direct antipathy, apathy, fear of reprisal or a disinclination to be mixed up in the matter, the instinct in India is to stand aloof and to give no assistance to the police. It is a matter of common occurrence, within the experience of every district magistrate and police-officer, that a serious crime occurs, the circumstances of which render it morally certain that many persons in the neighbourhood know all about it, and yet not a single witness is obtainable. In these conditions criminal justice in the East cannot, in Sir Harvey Adamson's opinion, afford to ignore any available source of evidence; and His Honour believes that it would be disastrous to discard the evidence of confession.

5. At the same time the Lieutenant-Governor believes that the existing procedure in recording confessions is in urgent need of improvement; and His Honour's opinion to that effect has been already placed before the Government of India in Mr. Fell's letter* relating to the proposed amendment of the Code of Criminal Procedure, to which I am to invite a reference. The frequent retracting of confessions has given rise to serious scandal, but in His Honour's view it is not surprising that confessions, recorded as they are at present, inspire little confidence. The practice is to record a confession simply as the accused chooses to make it; and this puts a premium on tutored confessions, because it is easy to tutor a person as to the substance of a confession when the tutor knows that the statement will be recorded without any attempt to test its truth. The instructions which have been laid down require a magistrate to question a confessing prisoner as to whether he has come voluntarily to confess, but when the prisoner's statement has been recorded in his own words, the

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* No. 1018M.—L.-5, dated the 5th July, 1911. Not printed.

High Courts discourage any further examination of the prisoner with a view to elicit the truth. In Sir Harvey Adamson's opinion what is wanted is to make the confessions themselves contain evidence not only of their voluntary nature but of their truth, so that the Courts which subsequently deal with them may have internal evidence on which to judge of their weight. It is easy for a tutored prisoner to say what he has been told; it is not easy for him to sustain a cross-examination on all the facts which he has stated, and on all the facts which he must know if what he has stated is true. Much greater reliance could be placed on confessions, whether retracted or not, if magistrates were enjoined, after recording the confession in the prisoner's own words, thereupon to examine him closely as to the statements made by him, as if he were a witness whose evidence the magistrate distrusted. In Mr. Fell's letter which I have cited, the Lieutenant-Governor recommended the amendment of the Criminal Procedure Code on the lines of Scotch law, by which a prisoner is subjected to examination, before trial, at the hands of the Sheriff and the Procurator Fiscal, and Sir Harvey Adamson adheres to that recommendation. His Honour is aware that objection may be taken to that proposal on the ground that an accused person ought not to be compelled to submit to examination, but in the cases which are now under discussion the position is different. When an accused person has volunteered a confession, there can be no reasonable objection on his part to every means being taken to ascertain from his own lips whether the confession is both voluntary and true. The Lieutenant-Governor's recommendation therefore is that the law should be amended, if necessary, so as to provide that when a confession has been recorded, its truth should be forthwith tested by the Magistrate who has recorded it, by closely questioning the accused on the statements made by him, with the object of ascertaining whether the confession is true or is the mere result of suggestion.

6. While the remarks in the foregoing paragraphs are applicable to India as a whole, I am to submit the following considerations to show that even if the recording of confessions were stopped in India, there are good grounds for extending a different treatment to Burma. In my letter, No. 601T.—7P.-2, dated the 31st May, 1912, the Lieutenant-Governor has pointed out that in Burma cases of serious ill-treatment of prisoners in police custody are comparatively rare, and that cases of actual torture are almost non-existent. In support of that statement certain extracts from letters written by officers of experience were submitted. In addition to those extracts, I am now to cite the following opinion recorded by the Commissioner of the Magwe Division, namely that "neither I nor the senior officers in this Division know of a single case of proved police torture or extortion of a confession in Burma." There is indeed a general consensus of opinion, in which the Lieutenant-Governor concurs, that torture or serious ill-treatment of prisoners by the police in order to compel them to confess is very infrequent in Burma. The grinding poverty which oppresses large classes of the population in India does not exist in this Province; the police share the merits and failings of the general population, which is more truthful and less skilled in intrigue than other races in India; the people of Burma are more independent and less afraid of the police; there is in Burma, as the Government of India are aware, a thoroughly efficient system of village administration, and the village headmen, who take an important part in investigating crime, are entirely independent of the police; and finally, district officers in Burma are in touch with the people, and serious oppression is not likely to pass unnoticed. The Lieutenant-Governor regards it as beyond doubt that abuses in the matter of extorting confessions are less frequent in Burma than elsewhere in India, and believes that the existing safeguards are sufficient for the protection of prisoners in police custody. His Honour therefore recommends that if the Government of India decide to abolish the system of recording confessions in India, Burma may be excepted from the rule, and that in this Province confessions may continue to be recorded and given in evidence as heretofore.

7. In conclusion, and with regard to the minor safeguards suggested in your letter, I am to say that, in the Lieutenant-Governor's opinion, confessions should be recorded by those magistrates only who have some experience; and His Honour would therefore restrict the power of recording confessions to magistrates of the first class and to magistrates of the second class who have been specially empowered in that behalf. But as regards the proposals (1) that a prisoner who has confessed should in no circumstances be given back into police custody and (2) that a prisoner about to confess should have spent at least one night out of police custody, I am to explain that both of these are quite impracticable in Burma. In the great majority

of cases occurring in this Province,—*i.e.*, in all cases occurring elsewhere than at the comparatively few stations where there are jails,—there is no custody except police custody into which a prisoner could be returned after confession or in which he could be detained beforehand.

Annexure 1.

Letter from W. B. Brander, Esq., I.C.S., Officiating Registrar, Chief Court, Lower Burma, to the Chief Secretary to the Government of Burma, No. 92, 16—3, dated the 9th January, 1912.

(Extract.*)

I am directed to acknowledge the receipt of your letter, No. 321—7P.-5, dated the 11th August, 1911, and to say that the Honourable Judges have considered the subject mentioned in this correspondence and have, in accordance with the requests conveyed in your letters of the 18th August and the 21st October, issued a general letter, No. 6, dated the 20th September, 1911, and a circular which is at present in press, copies of which are attached. As regards the recording of confessions, the system of recording confessions by a Magistrate other than the one who holds the inquiry, and before the inquiry begins, gives rise to the most numerous cases of complaints against the police so far as they come before the Courts. If the law did not permit confessions to be recorded before the commencement of the magisterial inquiry, the Honourable Judges feel confident that complaints against the police would greatly diminish. They would hope that as the motive for procuring confessions from accused would be lessened, malpractices on the part of the police with a view to obtaining them would diminish. The Honourable Judges would strongly recommend that recorded confessions made to any persons in authority before the magisterial inquiry into an offence commences should be held inadmissible in evidence. The reasons already stated above justify this suggestion; but there are others. In the experience of the Honourable Judges retracted confessions are more frequently a source of weakness in the prosecution of a case than a means of securing a conviction. They would not prevent a prisoner from making a confession during the inquiry to the Magistrate holding it. If an accused should make a statement incriminating himself during an inquiry, he would do so with full knowledge that he was being proceeded against to the end, and in many cases he would do so after he had been away from police influence for a considerable time. Such a confession would necessarily have great weight, although it might subsequently be retracted. The Honourable Judges believe that the adoption of this course would have the following good results:—The police would in their investigations be compelled to do their utmost to secure sufficient evidence to secure the conviction of the offender apart from any confession of guilt he might wish to make. The case would not be weakened by a subsequent withdrawal of dubious confession and allegations of ill-treatment in connection with it. Investigations by the police would be speedily held and not dragged on from day to day in the hope that the time might lead to a confession on the part of the accused. If an accused showed signs of a willingness to confess, the police would have every incentive to complete the investigation with a view to the appearance as soon as possible of the accused before the Magistrate. They would, however, quickly learn that it was not advisable to send up an accused on weak evidence in the hope that he would admit his participation in the crime charged against him. The Honourable Judges are convinced that if their suggestion is accepted, the detective efficiency of the police force will increase and all round better work will be secured. If, however, the system of confessions taken before the commencement of magisterial inquiry is retained, the Honourable Judges do not think it advisable to limit the recording of confessions by reference to circumstances, the special nature of which is to be decided on by the District Magistrate. Such a system would, in their opinion, scarcely be practicable. They think it would be sufficient if the power to record confessions were confined to first class and second class Magistrates. The proposals that it should be made an absolute rule that once a prisoner has confessed he should in no circumstances be given back into police custody and that it might also be possible to lay down that before a confession is recorded an accused person should have spent at least one night out of police custody would not, in the opinion of the Honourable Judges, be practicable in this province. As the proposal that all persons when produced before the Magistrate should be questioned as to whether they have suffered ill-treatment at the hands of the police, and that an examination of the prisoner's body should be made, if an allegation of ill-treatment is made has already been adopted, no comment appears to be necessary. To the proposal that the law should be amended if necessary so as to provide that when a confession has been recorded, its truth should be forthwith tested by the Magistrate who has recorded it by close questioning of the accused on the statements made by him with the object of ascertaining whether the confession is true or merely the result of tutoring, the Honourable Judges have no objection. Although actual ill-treatment of prisoners by the police is believed to be uncommon in this province, there is ground for belief that the exercise of inducement in various forms other than actual ill-treatment with a view to obtaining confessions from prisoners is far too frequent. This practice would best be met by making

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* The portions of this letter omitted related to subjects other than the procedure in regard to confessions.

confessions whilst in police custody futile as proof against a prisoner. Malpractices generally on the part of inferior police can only adequately be met by constant and close supervision by the superior officers of the force, and by frequent visits of Magistrates to lock-ups with a view to seeing that prisoners under detention there are properly treated. Further, a system under which all complaints by prisoners must be brought to the notice of the District Magistrate should inspire confidence in them that their complaints will be duly considered.

General Letter from the Chief Court of Lower Burma to all Sessions Judges and Magistrates, No. 6 of 1911, dated Rangoon, the 20th September, 1911.

The attention of all Sessions Judges and Magistrates is invited to the provisions regulating retracted confessions and alleged misconduct by the police contained in paragraph 129 of the Courts Manual.

At the request of His Honour the Lieutenant-Governor, the Honourable Judges further direct that in all cases in which strictures are passed upon the conduct of the police by any Court whether in a judgment or by means of a separate note a copy of the judgment or separate note should be sent at once to the District Magistrate concerned, or in Rangoon Town to the Commissioner of Police.

By order,

W. B. BRANDER (*Officiating Registrar*).

Annexure 3.

Circular from the Chief Court of Lower Burma to all Sessions Judges and Magistrates, dated Rangoon, the January, 1912.

The Honourable Judges have had their attention drawn to the facts that confessions are not recorded in the manner prescribed by law.

Under section 164 read with section 364, Code of Criminal Procedure, it is necessary that each question and answer should be recorded separately. Instead of following this course, Magistrates frequently record confessons in one continuous narrative.

When the confession is taken in this fashion contrary to the provisions of the Code, no presumption of genuineness arises under section 80, Indian Evidence Act, and the confession as it stands is not admissible as evidence. This error can be cured in the manner provided in section 533, Code of Criminal Procedure, by the Court which tries the case examining the Magistrate who recorded the confession as indicated in that section. He should be asked to state so far as he can remember the nature of the questions put to the accused. It is desirable to ascertain whether any leading questions were put and whether the Magistrate at the time of recording the confession had any knowledge from other sources of the facts of the case and of the facts which the accused might be expected to state. The accused should be present at the examination of the Magistrate and should be given an opportunity of cross-examination.

2. The confession itself is recorded in form Criminal 68 which has been amended so as to make obvious the necessity for recording separately each question and answer. Form Criminal 69 is at the request of the Local Government also being amended so as to provide that before a Magistrate signs the certificate prescribed by section 164, Code of Criminal Procedure, 1898, he shall satisfy himself that no inducement, threat or promise has been made in order to induce a confession and shall arrive at a positive belief that the confession has been voluntarily made. In this connection, the Magistrate shall wherever possible examine the body of the accused, provided that the accused consents to such examination, and if there appear to be grounds for suspecting violence he shall also if possible have the accused examined by a Medical Officer. The following additions are being made to the rules regarding confessions contained in paragraph 127 of the Courts Manual:—

To rule 2 add after "is voluntarily made"

"and that no inducement, threat or promise has been made in order to induce a confession".

As the second sentence to Rule 2 insert (the present second sentence becoming the third)—

"The Magistrate must, wherever possible, examine the body of the accused provided that the accused consents to such examination and if there appear to be grounds for suspecting violence he must also, if possible, have the accused examined by a Medical Officer".

Add at the end of rule 5—

"It is of the utmost importance that a Magistrate should arrive at a positive belief that the confession has been voluntarily made before signing the certificate".

By order,

W. B. BRANDER (*Officiating Registrar*).

Enclosure 8 in No. 1.

Letter from the Honourable Mr. H. LeMesurier, C.S.I., C.I.E., Chief Secretary to the Government of Eastern Bengal and Assam, to the Secretary to the Government of India, Home Department, dated the 31*st March*, 1912.

I am directed to refer to Sir A. Earle's letter, Nos. 781-790, dated the 12th-19th July, 1911, in which the Government of Eastern Bengal and Assam was requested to examine the rules in force in this province on the subject of the procedure to be followed both in the production before magistrates of accused persons in order to have their confessions recorded and in the recording by magistrates of the confessions of persons so produced.

The Government of India invited the Lieutenant-Governor's attention to the following specific questions in connection with the amendment of the existing rules, and have asked that the Provincial Regulations on the subject may be submitted to a searching examination in the light of the suggestions made and where necessary amended in consultation with the highest judicial authority :—

(1) In the first place it is asked whether on a balance of advantages and disadvantages, it pays to have confessions recorded at all before the trial commences, except in very special circumstances, and by order of the district magistrate;

(2) whether in case it is not possible to stop altogether the recording of confessions before trial on the motion of the police, the safeguards which are already prescribed with a view to ensure their voluntary character might not be made more stringent, and

(3) whether the power of recording such confessions should not be taken away altogether from magistrates of the third class and restricted to the magistrate having jurisdiction to try the case or at least to first class, or specially selected second class magistrates;

(4) whether it should not be made an absolute rule that once a prisoner has confessed, he should never be remanded to police custody and that before his confession is recorded an accused person shall have spent at least one night out of police custody;

(5) whether a rule similar to that obtaining in Bombay should not be framed requiring that all confessing prisoners when first produced after arrest should be questioned as to whether they have suffered any ill-treatment at the hands of the police.

2. The subject has received the most careful consideration of the Lieutenant-Governor. Selected officers both of the Executive and the Judicial, members of the service including the High Court have been consulted and a copy of the opinion of the Honourable Judges is annexed to this letter. In regard to the first question the weight of opinion and notably that of the High Court is against the exclusion of such confessions from evidence inasmuch as they are often of great assistance in elucidating the facts of a case. In this view Sir Charles Bayley concurs. He agrees however to the proposed alternative that such confessions should only be recorded by a first class magistrate or a sub-divisional officer. He further concurs in the proposal that before a confession is recorded, the prisoner should have been out of custody of the police for at least 24 hours. It is very essential that he should during this period also be kept apart from other prisoners in the jail in which he is confined.

3. The Lieutenant-Governor is in full agreement with the views of the Hon'ble Judges of the High Court quoted below, in regard to the remand of a confessing prisoner to police custody for the purpose of verifying his confession.

"The practice of verifying confessions should be carefully limited and should be confined to a verification of the facts which have been stated by the prisoner. Cases have been brought to notice in which the so-called verification has been used as a means of obtaining admissions to corroborate facts which have come to light after the confession has been made. This practice should be discontinued and a verification for the purpose of amplifying a confession should not be allowed. A verification of a confession should be entrusted to an experienced magistrate who should accompany the accused to the places referred to by him and his proceedings should be restricted to verification and discovery of facts and local features which

themselves either prove or disprove the truth of the statement. The investigating police officer should not be present at the time of the verification and only a sufficient police guard to prevent the prisoner from escaping." The rules already in force in this province provide that the guard shall consist not of police officers but of jail warders or persons of the Magistrate's Court and have thus anticipated the High Court's wishes.

4. As regards the desirability of a rule directing that when an accused person is first produced after arrest he should be questioned as to whether he has suffered any ill-treatment at the hands of the police, I am to refer to paragraph 9 of my letter No. 833-Pl., dated the 16th March, 1912, in which the Government of India have already been informed that such a rule will be embodied in the Eastern Bengal and Assam Police Manual and circulated to Magistrates through Commissioners.

5. In conclusion, His Honour is convinced of the profound truth of the Hon'ble Judges' comment that the best safeguard against the acceptance of an untrue confession improperly obtained will be found in the care and ability displayed by the magistrate who is entrusted with the duty of recording it. No effort has been spared to impress upon magistrates the importance of exercising these qualities when recording confessions, and the Lieutenant-Governor's displeasure has been communicated to police officers who have endeavoured to obtain advantage by producing a prisoner before inexperienced and incompetent magistrates in order to obtain a confession unfairly. He ventures, however, to point out that as a corollary it is essential that the Courts should receive with fairness and candour the testimony, whether oral or conveyed by the certificates signed under the provisions of the law by magistrates who have recorded confessions, as to the correctness of the record and the due observance of the precautions laid down by law or by rule. Instances have not been unknown in which judicial officers influenced either by solicitude for the prisoner's defence or by the insistence of his pleader have allowed their attention to be directed rather to the action of the magistrate by whom the confession was recorded than to the question of the guilt or innocence of the accused.—a state of things which has not always been conducive to the object with which Courts have been established.

Annexure.

Letter from R. L. Ross, Esq., I.C.S., Registrar of the High Court of Judicature at Fort William in Bengal, Appellate Side, to the Secretary to the Government of Eastern Bengal and Assam, Revenue and General Departments, No. 75, dated the 29th February, 1912.

I am directed to acknowledge the receipt of your letter No. 2844-Pl., dated the 24th August, 1911, with which you forwarded a copy of a letter No. 781-790, dated the 12th July, 1911, and enclosures, from the Government of India, in the Home Department, regarding the procedure to be followed both in the production before magistrates of accused persons to have their confessions recorded, and in the recording by magistrates of the confessions of persons so produced. You requested that the Government of Eastern Bengal and Assam might be favoured with the expression of the views of the Hon'ble the Chief Justice and Judges on the subject.

2. In reply I am to say that the first question on which the opinion of the Court is asked is whether, on a balance of advantages and disadvantages, it is desirable to have confessions recorded at all, before the trial commences except in very special circumstances and by order of the District Magistrate. In the opinion of the Judges, the answer to this question should be in the affirmative. They think that any man who is alleged to be implicated in a crime should, if he so desire, be permitted to make any statement either admitting his guilt or explaining any facts or circumstances which appear to inculpate him, and to have that statement recorded by a trustworthy and experienced magistrate.

3. The next point raised in Sir Archdale Earle's letter touches the safeguards which exist and suggests that they may be made more stringent. On this point the Court recommends that the statement made by an accused person should ordinarily be recorded by a magistrate who has jurisdiction to try or enquire into the case. Only in the event of such a magistrate not being available, should a junior or an honorary magistrate be allowed to record it. No police officer who has been engaged in the investigation should be allowed to be present when the statement is recorded and only those officers who may be necessary to guard the prisoner.

4. The Judges think that the practice of verifying confessions should be carefully limited and should be confined to a verification of the facts which have been stated by the prisoner. Cases have been brought to notice in which the so-called verification has been used as a means of obtaining admissions to corroborate facts which have come to light after the confession has been made. This practice should be discontinued, and a verification for the purpose of amplifying a confession should be disallowed. A verification of a confession should be entrusted to an experienced magistrate who should accompany the accused to the places referred to by

him and his proceedings should be restricted to the verification and discovery of facts and local features which themselves either prove or disprove the truth of the statement. The investigating police officer should not be present at the time of the verification and only a sufficient police guard to prevent the prisoner from escaping.

5. Where the prisoner alleges the improper influence, physical or moral, has been brought to bear on him to induce a confession, the charge should be promptly investigated; and where physical violence is said to have been used, the prisoner should be examined at once by a medical officer.

6. In conclusion, the Judges desire to suggest that the best safeguard against the acceptance of an untrue confession improperly obtained will be found in the care and ability displayed by the magistrate who is entrusted with the duty of recording it. They think that no advantage would be gained by a further elaboration of the rules in force in this province regulating the procedure to be followed after the prisoner has been brought to the presence of the magistrate. The only essential is that the magistrate who records the statement shall be an officer of inelligence and experience sufficient to enable him to determine whether it is a free and voluntary confession and not a statement which is the result of outside influence.

Enclosure 9 in No. 1.

Letter from E. A. de Brett, Esq., I.C.S., Chief Secretary to the Chief Commissioner, Central Provinces, to the Secretary to the Government of India, Home Department, No. 116, *dated Nagpur, the* 4*th April,* 1912.

I am directed to refer to Mr. (now Sir Archdale) Earle's letter No. 781-790, dated the 12th July, 1911, on the subject of the procedure to be followed both in the production before magistrates of accused persons to have their confession recorded, and in the recording by magistrates of the confessions of persons so produced.

2. The first question put by the Government of India is whether, on a balance of advantages and disadvantages, it pays to have confessions recorded at all before the trial commences except in very special circumstances under the orders of the district magistrate. The two great disadvantages which are said to attach to the present system are (*a*) that the police are tempted to devote their efforts to obtaining confessions to the neglect of the evidence, and (*b*) that the confessions are often obtained by ill-treatment or actual torture. It is also said that the confessions, when obtained, are seldom of any use, since they are generally retracted, and if not retracted but confirmed at the trial, are superfluous. It is claimed that the repeal of section 164 of the Code of Criminal Procedure, 1898, would lead to a great improvement in police work and would remove the occasion for a great deal of abuse now heaped on the police on account of some real and many imaginary cases of torture, while it would deprive the courts of little or no material of real value. On the other hand, it is urged that the confessions that are of value to the police are those which lead to the discovery of property or of circumstantial evidence, and that the fact that confessions could no longer be recorded by a magistrate would in no way diminish the temptation to extort such confessions by improper means, that the old type of police officer whose sole idea was to get a confession and then sit down with folded hands and wait for the necessary sequel of a conviction, is rapidly disappearing, that it cannot be said either that subsequently confirmed confessions are superfluous or that retracted confessions are valueless, and that to repeal the section would in certain classes of cases deprive the prosecution of a valuable weapon.

3. The Chief Commissioner has consulted the Judges of the Judicial Commissioner's Court, the Inspector-General of Police and all Commissioners and district magistrates, and I am to enclose, for the information of the Government of India, the opinions recorded by the Judges of the Judicial Commissioner's Court and by Mr. J. Hullah, I.C.S., Deputy Commissioner, Narsinghpur. There is much difference of opinion, but broadly speaking the judges are in favour of maintaining the present system with added safeguards, and the police and the majority of executive officers are in favour of abandoning recorded confessions altogether. Mr. Fox-Strangways hesitates in such a matter to put aside the almost unanimous opinion of the Police Department supported as it is by several district magistrates of experience. But he agrees with those officers who have expressed the view that the abandonment of the magisterial record of confessions would in no way reduce either the temptation or the opportunities to put pressure on accused persons, and that thus what he takes to be the main object of the proposed change would not be served.

As to the improvement in the efficiency of police investigations which is expected to follow from the removal of the snare of the recorded confession, the Chief Commissioner believes that the steady improvements of the police force, especially in the investigating ranks, is eliminating this source of weakness and that Government should not seek a somewhat problematical improvement in general methods by abandoning altogether the use of confessions so long as it can be shown that they are of definite use in certain cases.

4. There are certainly cases where without a confession recorded early in the proceedings no conviction would ever be obtained. Mr. Fox-Strangways believes that in the Alipur Bomb Case the confessions of some of the accused were of extreme value and that without them some of the persons convicted would have escaped. Then there are confessions of crime, such as murder, to which there were no eye witnesses, confessions made out of bravado by the dacoit or political offender who glories in his crime, and the confession made at or near the scene of the crime among people who know the facts and the actors and under the pressure of a public opinion which the accused cannot resist. All of these may be retracted later; but a confession made with great detail may often bear upon it such an impress of truth that subsequent retraction does not destroy its value. Again, an early confession may have great value in enabling the prosecution to select approvers, and the magisterially recorded confession is at least undoubted evidence of the confession having been made, and may thus be admissible under section 27 of the Evidence Act when the evidence of the police might be distrusted.

5. The Chief Commissioner agrees with the generally expressed opinion that the power to record confessions before trial might be restricted to first class or specially selected second class magistrates and does not think it is necessary to limit it to the magistrate actually inquiring into the case. He does not consider it either practicable or necessary to lay down that an accused person who has confessed should not be remanded to police custody. It is not the man who has confessed, but the man who has not yet confessed who is in need of protection. In order to make certain that the confession was not due to fear of police ill-treatment it would be necessary that the accused should be assured that if he were put up to confess and refused to do so or made only a partial confession he would not be remanded to police custody. The Chief Commissioner considers that this could not be done, and that in many cases confessing prisoners must be returned to police custody for the purpose of pointing out property and so on. In his opinion it is hardly practicable to provide that the accused should always spend one night out of police custody before confessing, though it might be an executive order that this should be arranged for where time and other circumstances allow.

5. As regards the actual procedure before the magistrate, the Chief Commissioner agrees with the Judicial Commissioner that no further precautions other than those prescribed in section III. of Criminal No. 1-7 appear necessary to safeguard the interests of justice.

Annexure 1.

Letter from J. Hullah, Esq., I.C.S., Deputy Commissioner, Narsinghpur, to the Commissioner, Nerbudda Division, Hoshangabad, No. 559, *dated the* 30*th August,* 1911.

I have the honour to reply to your endorsement No. 466, dated the 17th August, 1911, forwarding certain papers in which it is suggested that the practice of recording confessions under section 164 of the Criminal Procedure Code may be abandoned, and to say that I am wholly opposed to this suggestion.

2. The question may be considered in two aspects:—
Firstly: as affecting the administration of justice and the discovering of truth;
Secondly: as tending to improve police work and to prevent oppression by the police.

3. As regards the former of these two aspects I do not think that we should allow to pass unchallenged the Government of India's statement that "in an unsophisticated community a confessing prisoner will ordinarily persist in his confession throughout the proceedings." Experience, I would submit, shows that this is not "ordinarily" the case. However unsophisticated a prisoner may be, he will almost invariably meet in the undertrial ward of the jail other undertrial prisoners who are a good deal less unsophisticated than himself, and who will point out to him the folly of his confession; moreover, there is good reason to believe that the subordinate jail officials are themselves not infrequently guilty of similar well-meant or ill-meant interference.

4. Next, as regards the value of confessions. While it is obvious that considerable value must be attached to confessions which are not retracted until a late stage in the proceedings has been reached—as, for instance, a confession persisted in before the committing magistrate but retracted before the sessions court—yet I am quite prepared to agree that in many cases confessions, especially those retracted at an early stage of the proceedings, are practically valueless. Such valueless confessions are usually mere bald admissions of guilt with little in the way of supplementary detail or narrative. But there are other confessions, which, though immediately retracted, are *so full of detail* that they bear on their face the unmistakable impress of truth. The value of detail in a confession does not seem to have received sufficient notice in such rulings as I have been able to consult on the subject of confessions. But I have found one ruling (Indian Law Reports, 20 Allahabad, 133) where this point is well emphasized. The ruling is concerned with the conviction of two persons against whom there was practically no evidence except their own confessions subsequently retracted. The High Court, in upholding the conviction, remarked as follows:—

> "Where a confession is not supported by the evidence of witnesses, a judge must examine very carefully to see whether it gives those details which indicate that it is a natural narrative of what took place in the presence of the man making it. . . . In the present case the confession is full of detail, it is very circumstantial, and bears on it, in our opinion, the impress of truth."

If we abandon the practice of sending accused persons before the magistrates for making confessions, we run the risk of losing not only the three kinds of confessions referred to in paragraph 3 of the Local Administration's letter, but also the not infrequent cases where the confession is full of detail, and therefore of the utmost value.

5. Still a further consideration, in considering the question in its bearing on the courts of justice, is the fact that the magistrate's record of the confession is conclusive proof that the confession, even if untrue or subsequently retracted, was actually made. Section 27 of the Evidence Act allows the proof of such information, whether it amounts to a confession or not, as relates to a fact discovered thereby, and the Hon'ble the Chief Commissioner has remarked that such confessions would not be affected by the repeal of section 164 of the Criminal Procedure Code. In reply to this suggestion I would submit that if the practice of recording confessions under section 164 is abandoned, it will always be open to the accused *to deny that he ever gave information to the police at all*, and to say that therefore the fact discovered could not have been discovered in consequence of such information. The trying court may be over-distrustful of the police, and may be inclined to believe the accused's statement that he never gave the information leading to the discovery of important evidence: in short, that the story of the giving of the information is itself a pure fabrication. But not even the most distrustful court can disbelieve that the accused did make a confession if it has the magistrate's record to consult.

6. As regards the improvement of police work, there can be no doubt that of late years methods of investigation have much altered, and the alteration has been in the direction of greater judicial acumen. This is partly owing to a higher standard of education among police officers, and partly owing to the influence of the bar, which has made it necessary for the police to strengthen the prosecution as much as they can so as to make it unassailable. One of the lessons that they have certainly learnt, is that they must not relax their efforts through reliance on a confession, but must take care to support their cases with evidence as well. While, therefore, the repeal of section 164 may perhaps make the police even more careful that at present, I think they already realize sufficiently the importance of evidence apart from confessions, and I certainly do not think that the repeal of the section 164 will effect such an improvement in police work as will outweigh the considerations that may be urged against such a measure.

7. But after all there can be no doubt that the chief motive underlying the suggestion now under criticism—at least in so far as it may have been made by persons who have no practical experience of India—is the desire to prevent oppression by the police. Here, again, I do not believe that the measure suggested will effect any real improvement. If the police are over-keen on obtaining confessions, this is not because they regard confessions as important in themselves, but because a confession immediately gives them a line on which to direct their investigation and a clue to evidence that they could not otherwise obtain. To obtain such evidence they will continue to work for confessions even if section 164 is repealed, and accused persons will not be any more secure than before. The way to prevent oppression is not to abandon the recording of confessions by magistrates, but severely to punish oppression when it is proved, and to aim at improving, by education and precept, the morality of the force. In this direction there has already been considerable progress, and more is certain to follow in the future.

8. To sum up, I oppose the suggestion for the following reasons:—

(i) We shall lose many confessions which, owing to the amount of detail which they contain, are obviously true.

(ii) The accused can deny that he ever made a confession, and so defeat section 27 of the Evidence Act.

(iii) Police methods of investigation will not be much improved, and do not really stand in much need of improvement as regards appreciating the value of confessions.

(iv) Oppression will not be diminished, as confessions will still be worked for so as to obtain a line on which to conduct the investigation.

9. There remain to be considered the points raised in paragraph 4 of the Government of India's letter.

10. I agree that no magistrate below a first class magistrate should be allowed to record confessions. Magistrates of lower class, through inexperience and want of ability, are apt to overlook important and indispensable formalities, and are also less independent in their attitude towards the police.

11. I do not at all agree with the suggestion that once a prisoner has confessed he should in no circumstances be given back to police custody. It is before, not after, his confession that he chiefly runs the risk of ill-treatment, while his presence may be absolutely necessary to elucidate the facts revealed by his confession. His return to police custody may be allowed, subject to sanction of the district magistrate.

12. I do not agree with the suggestion that before a confession is recorded an accused person should have spent at least one night out of police custody. He is likely to come under contaminating influences in the undertrial ward. A recent case in this district strengthens me in my opinion. Three accused persons gave the district superintendent of police an account of a murder, which by its abundance and exactness of detail convinced him of its absolute truth. The accused were at once taken before a magistrate who refused to record the confession as it was late in the evening and he had no facilities for doing so, not being in court. Next day the accused were brought up for having their confession recorded and denied all knowledge. They persisted in this denial in the sessions court, but the sessions judge offered pardon, and thus obtained a full confession corresponding exactly in its details with that given to the district superintendent of police. But when an accused is brought up for confession and then refuses to make one, then I think that under no circumstances should he be given back to the police, for in such cases the police are specially likely, through resentment, to exercise oppression.

13. The Bombay rule, regarding questions about ill-treatment, may be adopted. The Hon ble the Chief Commissioner has already directed in the Local Administration's letter No. 299-IV, dated the 15th August, 1911, that the Bombay rule, regarding the examination of prisoners' bodies, shall be adopted.

Annexure 2.

Letter from A. C. Beet, Esq., I.C.S., Registrar, Judicial Commissioner's Court, Central Provinces, to the Secretary to the Hon'ble the Chief Commissioner, Central Provinces, in the Police Department, No. 3187-1-37-2-11, dated the 14th September, 1911.

With reference to Mr. Hamilton's letter No. 289-IV-1-37, dated the 8th August, 1911, in which the Judicial Commissioner was requested to express his opinion on certain questions relating to confessions by accused persons, I am directed to inform you that the judges of this court met to consider the matter and that opinions have been obtained from the three most experienced of the sessions judges now serving under the Local Administration.

2. A copy of the letters received from sessions judges is enclosed. It will be observed that only Major Morris is in favour of taking away from all magistrates the power to record a confession made by an accused person before the commencement of an inquiry or trial.

3. The judges of this court arrived unanimously at the conclusions set out in the subjoined paragraphs of this letter.

4. The power in question should certainly be retained. Besides the three kinds of voluntary confession mentioned in paragraph 3 of the letter under reply there is one which is not uncommon, namely, that made because the accused is among people who know the truth and are anxious that the investigation should be completed: the average criminal is not qualified to judge how far the certainty reached by his fellow-villagers is based on evidence admissible in a court of justice and thinking denial to be useless he makes a clean breast of his guilt. Whatever be the motive leading to a voluntary confession, the fact that it is voluntary should be regarded as warranting its prompt commitment to writing by an unbiassed authority, if only for the reason that in some cases independent evidence sufficient for conviction is not obtainable. Power to secure such a record may also be regarded as almost essential if proper advantage is to be taken of section 26, Indian Evidence Act, which allows proof to be given of a confession made by a person in the custody of a police officer provided a magistrate was actually present at the making: in some cases the police will be able to procure a magistrate to be present, and an authorised record of what may be said is obviously a safer guide than oral evidence. Moreover, the present seems to be altogether an unsuitable time for withdrawing from the police a power they have enjoyed for nearly 40 years, inasmuch as the efforts of Government to improve the system of investigating officers have already begun to bear fruit. Again, a record made under section 164, Criminal Procedure Code, has a special value in cases where it is desirable to tender pardon to one of several accused persons: the court conducting the trial of the other participators in the crime is hereby enabled to know precisely what the approver's original story was.

5. Although, however, the power to record confessions given by section 164 should not be withdrawn, experience shows that its possession by every magistrate is not desirable. The "nearest magistrate" to whom an accused person should be forwarded under section 167 (1) is too often a naib-tahsildar or an honorary magistrate who may be quite unable to appreciate such elaborate but essential instructions as those contained in sections III. and IV. of this court's Criminal Circular No. 1-7. In practice the police do not trouble to get confessions recorded except in serious cases such as no magistrate of the second or third class could inquire into or try: the power in question may therefore be confined to first class magistrates without fear of hampering the investigation. At the same time the general power of authorising detention in police custody which section 167 (2), Criminal Procedure Code, confers should also be restricted: this is frequently exercised without regard to the principles laid down in paragraph 3, section IV. of the circular above cited, and by the time the order is scrutinized under paragraph 4 *ibid* the harm sought to be avoided has been done. The authority allowed to deal with applications for detention in police custody should be at least equal in intelligence and

independence to the highest class of police officer likely to present such an application, and, speaking generally, this qualification is not likely to be met with except in stipendiary magistrates with powers of the first or second class. If the legislature is unwilling to amend section 167 (2) in this sense, the necessary directions should be given by executive order to the magistracy and police and compliance therewith should be rigorously exacted.

6. If the foregoing recommendations are adopted, no further precautions other than those prescribed in section III. of Criminal Circular No. 1-7 seem essential to safeguard the interests of justice.

Enclosure 10 in No. 1.

Letter from P. B. Warburton, Esq., I.C.S., Secretary to the Chief Commissioner of Coorg, to the Secretary to the Government of India, Home Department, No. 141, *dated the* 13*th January*, 1912.

I am directed to acknowledge the receipt of your letter No. 781-790, dated the 12th-19th July, 1911, on the subject of recording confessions of accused persons, and in reply to submit the following remarks.

2. The rules* now in force are contained in the Judicial Commissioner's Circulars Nos. 12, dated 27th February, 1895, and 2, dated 21st December, 1906, and the Standing Orders issued by the District Magistrate of Coorg.

3. The suggestions made in paragraphs 3 and 4 of the letter under reply are—

(1) The prohibition altogether of the recording of confessions on the motion of the police.
(2) The absolute prohibition of the recording of confessions by third class magistrates, and the limitation of such power to the magistrate having jurisdiction or at least to a first class, or specially selected second class magistrate.
(3) An absolute rule that after confession an accused should not be given back into police custody.
(4) That before confession an accused person should spend at least one night out of police custody.
(5) The questioning of accused persons as to ill-treatment and examination of their persons before recording a confession.

4. As regards (1) the local authorities remark that confessions are readily volunteered in the early stages of an investigation in Coorg. There is no reason in their opinion to apprehend that they are extorted by ill-treatment or undue pressure from the police, yet in nearly every instance they are retracted when the case comes on for trial. The reason is not far to seek. After detention for a few days in Mercara Jail with other "undertrials" less unsophisticated than himself, the confessing prisoner determines to have a fight for liberty. He engages a lawyer and retracts his confession, or even if he cannot engage a lawyer, he still retracts and hopes to have a better chance of escape. In such cases the Chief Commissioner is of opinion that a properly recorded confession may be of great use. Important witnesses can be gained over, and a clever vakil may be able to make the worse appear the better cause, but it is always difficult to explain away a genuine confession. On the other hand, the recording magistrate, if he exercises due care, should have little difficulty in placing the proper value on a false confession which is being made under the influence of fear or ill-treatment. There can be little doubt that in cases of serious crime a prompt enquiry will often elicit the truth and the guilty man will blurt out his complicity in the crime. If, on the other hand, the accused person is taken into police custody without a magisterial record of his first confession and is subsequently placed in jail, the result may be and often is that he will deny his guilt. It may also be argued that in these circumstances an accused may be left longer in police custody and that a confession made by him at a later date may have been induced by undue influence on the part of the police.

5. In regard to the second point, the Chief Commissioner is in favour of the recording of confessions by the highest magistrate available, but to provide against an accused being unduly long in police custody *en route* he would require that all confessions shall be so recorded if the accused can be produced before such

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* Annexed.

magistrate in one day's march: if not, the duty should be performed by the taluk magistrate, who, in Coorg, is ordinarily a man of experience with some length of service and quite fit to be trusted to record a confession with due care, though he may be a third class magistrate. It is therefore proposed to frame a rule as follows:—

> "All confessions shall ordinarily be recorded by a first or second class magistrate if the accused can be produced before him within 24 hours. If not, the duty shall be performed by the nearest third class magistrate."

6. *Third point.* The return of confessing prisoners to police custody should be prohibited, except when this is unavoidable to secure the identification of persons or property or the discovery of property: magistrates should be required to state clearly in their order in such cases why it is unavoidable.

7. *Fourth point.* The present practice in Coorg on this point is regulated by Magisterial Standing Order No. 2 of 1909, which is as follows:—

> "In continuation of Judicial Commissioner's Circular No. 2 of 1906 and of District Magistrate's Standing Order No. 2 of 1908 (Magisterial), magistrates are reminded of their discretion to postpone the recording of a confession which they may have reason to believe is not voluntarily produced. In such cases it will ordinarily be sufficient if the accused is removed from police custody for a few hours, and either remanded to a sub-jail or made to remain in the office or court room. It is not usually necessary to put off recording a confession to another day, as in that case the accused may be subjected to influences preventing him from making any disclosure, however voluntarily he might previously have been ready to make it."

It is proposed to continue the existing practice.

8. *Fifth point.*—The Chief Commissioner does not think that the body of a prisoner need be examined unless on enquiry he alleges ill-treatment: there are other means of inducing confessions besides physical ill-treatment. If such allegations are made and marks of violence are discovered on the accused's body, the magistrate should have him examined by a medical officer without delay, and should place on record the result of the examination.

9. The existing orders seem to deal very completely with the question of confessions. The Chief Commissioner would, however, suggest the following alterations and additions to the rules issued in Judicial Commissioner's Circular No. 2 of 1906:—

(1) The addition of the rule mentioned in paragraph 5.

(2) *For Rule IV. substitute*—

> "No attempt shall be made to draw unwilling or unguarded admissions from the accused person by close and inquisitorial questioning; but he may properly be questioned so far as may be necessary, to enable the magistrate—
>
> "(*a*) to elicit from him whatever facts he is willing to state,
>
> "(*b*) to understand exactly what is his meaning and how far he intends his confession or admission to go."

(3) *Rule IX.* Delete the latter portion of the note to Rule IX. (*b*), viz., "As to whether the prisoner should be sent to a magisterial lock-up or remanded to the police, the magistrate should be guided according to the opinion formed—

> "(i) whether the confession is voluntary or improperly obtained, and
>
> "(ii) whether, in case of opinion that the confession is voluntary, he considers that the return of the prisoner to the police is of importance to the proper preparation of the case."

(4) Insert after Rule IX. (*b*) the following:—

> "Magistrates should use their discretion to postpone the recording of a confession which they may have reason to think is not made voluntarily. In such cases it will usually be sufficient if the accused is removed from police custody and from their presence and either remanded to the sub-jail for a few hours or made to remain in the office or court room. Where no such suspicion exists it is inadvisable to put off recording the confession until next day as the accused may meanwhile be subjected to influences which will prevent him from making any disclosure, however ready he might previously have been to make it."

(5) Add a new Rule as Rule IX. (*d*) relettering the subsequent clauses :—

"The Magistrate shall ask the accused if he has any complaint to make of ill-treatment by the police. If any allegation of ill-treatment is made, the magistrate shall there and then examine the accused's person, if the accused consents, to see whether there are any marks of injuries as alleged, and shall place on record the result of his examination. If there appear to be marks of violence on the accused's body the magistrate shall have him examined by a medical officer without delay."

(6) Add Rule X. :—

"A confessing prisoner must on no account be remanded to police custody after confession unless the magistrate is satisfied that such remand is unavoidable in order to secure the identification of persons or property or the discovery of property. The magistrate in such cases will state clearly in his order why the remand is unavoidable."

Annexure 1.

Circular from the Court of the Resident in Mysore and Judicial Commissioner of Coorg to the Sessions Judges and all Magistrates in the Civil and Military Station of Bangalore and Coorg, No. 12, *dated Bangalore, 27th February,* 1895.

In a recent criminal case it appeared that the statement of an accused person taken under section 164 and section 364, Criminal Procedure Code, was not recorded by the magistrate in the language in which he was examined. The magistrate who was examined stated to the court that he had recorded the confession in the language of the court, first because it was his custom, secondly because his head clerk was absent, thirdly because the statement of the accused was difficult to record or transliterate as it was delivered in "butcher Hindustani." The Resident and Judicial Commissioner therefore invites the attention of all magistrates to the provisions of section 364 of the Criminal Procedure Code which are not satisfied by a plea of custom, of inconvenience or of difficulty.

2. The law admits a confession not recorded as directed in the section only where it is not practicable to record such a statement in the language in which the accused is examined or makes his statement; and in the case referred to a grave miscarriage of justice resulted from the omission to comply with the law because the High Court could not admit the confession as evidence.

(Sd.) A. RAMAYA PUNJA, *Registrar.*

Annexure 2.

Circular from the Court of the Resident in Mysore and Judicial Commissioner in Coorg to the Sessions Judges and all Magistrates in the Civil and Military Stations of Bangalore and Coorg, No. 2 (*Criminal*), *dated* 21*st December,* 1906.

In continuation of Circular No. 12, dated 27th February, 1895, the following instructions on the subject of taking and recording statements and confessions of accused persons are issued for guidance:—

I. Every statement or confession by an accused person, recorded under section 364 or section 164 of the Code of Criminal Procedure, shall, whenever practicable, be recorded in the language in which such statement or confession is made.

II. When such language is not the language of the court as determined by the local Government under section 558 of the Code of Criminal Procedure, or the language prescribed by an order under section 357 of the Code, the record of the statement or confession should, in all appealable cases, be translated into the language of the district, or into the English language where the sessions judge or magistrate ordinarily writes his proceedings in English, and such translations should be authenticated by the signature of the translator and also of the judge or magistrate before whom the statement or confession is made.

III. The statement or confession should be written down fully and accurately, and, if not written by the magistrate with his own hand, the magistrate should, as the examination proceeds, make a memorandum of such statement or confession in the language of the court or in English, with his own hand and under his signature.

IV. The magistrate should only question the accused person so far as may be necessary to enable the magistrate to understand clearly the accused person's meaning. The statement must be recorded in the form of question and answer, and every question put and every answer made to such question should be written down in full.

V. When the accused person has concluded his statement or confession the written record of his statement or confession should be read out or shown to him by, or in presence of, the magistrate, and any explanations or additions by the accused person to such statement or confession should be written down in the manner prescribed above.

VI. The magistrate shall then desire the accused person to add his signature or mark to such statement or confession. If the accused person declines to sign or affix his mark, the magistrate shall state the fact and the reason, if any, assigned by the accused person for so declining.

NOTE.—In cases in which the magistrate records an English rendering of the statement made by the accused in his own vernacular, the mark or signature of the accused should be affixed to the statement recorded in the accused's vernacular and not to the English counterpart.

VII. The magistrate shall then certify, under his own hand, that the statement or confession of the accused person was made voluntarily; that it was taken in his presence and hearing; that it was read over to him and was admitted to be correct, and that it is a full and true account of the statement made by the accused.

VIII. The magistrate may state in writing any other circumstance attending the making or recording of the statement or confession of an accused person. Any such memoranda made by the magistrate, if not embodied in the certificate, must be separately signed by him.

IX. When the statement to be recorded is a confession under section 164 of the Code, the following additional formalities must be observed:—

(*a*) It is not desirable that any police officers should be present when a confession is being recorded under section 164, except such as may be necessary to secure the safe custody of the accused person when, in the magistrate's opinion, the duty cannot safely be left to other attendants. In any case it is undesirable that the police officer making the investigation should be present.

(*b*) Before recording the confession the magistrate shall write (in the form appended to this circular) in the language in which he ordinarily writes his judgments, a brief memorandum of the inquiry made by him, and which he is by law bound to make, in order to ascertain that the accused person is acting voluntarily in making a confession. The certificate at the foot of the form becomes a useless formula to a superior court unless the recording officer shows by what steps he has satisfied himself the confession is voluntarily made.

NOTE.—Magistrates should enquire into the circumstances under which a confession is made, the length of time a confessing prisoner has been under suspicion before arrest, and the opportunities afforded to his accusers or to the police to induce a confession improperly. As to whether the prisoner should be sent to a magisterial lock-up or remanded to the police, the magistrate should be guided according to the opinion formed—

(i) whether the confession is voluntary or improperly obtained, and

(ii) whether in case of opinion that the confession is voluntary, he considers that the return of the prisoner to the police is of importance to the proper preparation of the case.

(*c*) One important point upon which the magistrate should invariably question the accused person is as to the length of time during which he (the accused person) has been in the custody of the police. It is not sufficient to note the date and hour recited in the police papers, at which the accused person is said to have been formally arrested.

(*d*) When recording the confession he should note (i) the date and hour of the commission of the alleged offence, (ii) the date and hour of the first detention in custody by the police, (iii) the section of the Code under which the confession is recorded.

(*e*) The record will be forwarded in due course to the magistrate by whom the case is inquired into or tried.

(*f*) In every case in which the record of a confession by an accused person taken under section 164 is received by the magistrate inquiring into or trying the case, the magistrate shall ask the accused person whether he made the statement purporting to have been made by him before the magistrate from whom the record of the confession was received. The statement shall be shown or read to the accused person and the fact noted by the magistrate, and the accused person's answer to the question shall be recorded in full.

(*g*) Confessions taken under section 164 of the Code of Criminal Procedure shall be recorded in the form appended to this circular. A reference to the provisions of section 80 of the Evidence Act will show the great advantage to be derived in subsequent proceedings, in the form of presumption dispensing in the first instance with proof, if magistrates are careful in observing the directions laid down by law and supplemented by the above instructions.

"By Order of the Court,"

(Sd.) N. S. TIRUMALAI AIYANGAR, *Registrar.*

APPENDIX.

IN THE COURT OF

King-Emperor v.

The confession of taken by me a magistrate of the This day 190 .

Date and hour of the commission of the alleged offence... ... ...
Do. do. of first detention in custody by the police ... ...
The section of the Criminal Procedure Code under which the confession is recorded... ... ...

Memorandum of Inquiry into the voluntariness of the confession.

Magistrate, Class

STATEMENT OF THE ACCUSED

Mark or signature of accused

(Signed)

I believe that this confession was voluntarily made. It was taken in my presence and hearing, and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him.

(Signed)

Magistrate, Class.

NOTE.—When the accused person's statement is not sufficiently lengthy to cover the entire space allotted in the form, the magistrate should draw his pen diagonally across the unused space to mark the actual conclusion of the statement made.

Annexure 3.

Standing Orders issued by the District Magistrate of Coorg.

No. 2 (Magisterial), dated 6th March, 1908.

From some specimens of confessions recently recorded by magistrates, it appears that the nature of the memorandum required by Judicial Commissioner's Circular No. 2, dated 21st December, 1906, to be prefixed to the statement of the accused is not clearly understood. Attention is therefore drawn to the provisions of paragraph IX (*b*) and (*c*) of the Circular, which require the magistrate to record not the actual questions he asks accused in order to find out if the confession is voluntary or not, and accused's answers, but a statement of the grounds which lead him to believe that the confession is voluntary.

2. The following is a specimen of the kind of entry which should be made under the heading "Memorandum of Inquiry into the voluntariness of the confession":—

"The police papers show that accused has been in custody for seven days, and accused's own statements confirm this. Three of those days were spent in travelling, and for only two has he been in the custody of the officer conducting the investigation. Before questioning accused all police officers were excluded from the court. Accused assures me that what he has to say will be said of his own free will, and not in consequence of any inducement offered by the police or others, or any ill-treatment caused to him. I see no reason to suppose that he has been subjected to any form of pressure, and I believe that his confession will be voluntarily made."

(Sd.) A. J. CURGENVEN, *District Magistrate.*

No. 2 (Magisterial), dated 6th September, 1909.

In continuation of Judicial Commissioner's Circular No. 2 of 1906, and of District Magistrate's Standing Order No. 2 of 1908 (Magisterial), magistrates are reminded of their discretion to postpone the recording of a confession which they may have reason to believe is not voluntarily produced. In such cases it will ordinarily be sufficient if the accused is removed from police custody for a few hours, and either remanded to a sub-jail or made to remain in the office or court room. It is not usually necessary to put off recording a confession to another day, as in that case the accused may be subjected to influences preventing him from making any disclosure, however voluntarily it might have been made previously.

(Sd.) A. J. CURGENVEN, *District Magistrate.*

Enclosure 11 in No. 1.

Letter from the Honourable Lieutenant-Colonel Sir George Roos-Keppel, K.C.I.E., Chief Commissioner and Agent to the Governor-General, North-West Frontier Province, to the Secretary to the Government of India, Home Department, No. 2383-G., dated the 20th November, 1911.

(Extract.*)

I have the honour to address you with reference to your letter of 12th of July, 1911, dealing with the question of confessions. I am not in favour of altering the existing rules in this province which appear to me to work well. It is true that many persons, who make initial confessions withdraw these later, but in these cases it is very rare for an accused to give as a reason for the withdrawal of his confession that it has been obtained by pressure; he is usually content to flatly deny that he ever made such a confession at all. While these confessions are often of little value in the conviction of an individual offender, they are frequently of incalculable value in a country where raiding, gang robbery, murder by gangs, cattle lifting and rioting are rife, as an arrested person may and often does in the first despondency of the moment of arrest make a confession and tell the whole story of the crime, giving the names of his companions and mentioning where the stolen property is deposited: the man may deny this confession later, but in the meantime the police, working on the information which he has given them and which they could have obtained from no other source, have discovered the stolen goods, arrested the receiver in whose house they were found and arrested many members of the gang, with the result that people who were afraid to come forward while the gang was at large become willing and ready to give evidence and a dangerous organisation is broken up. So far from restricting the power of taking confessions, I would encourage it by all the means in my power, leaving it to the sense of the Magistracy and Judiciary to assess individual confessions at their proper value and to bring to notice any case in which the prisoner states that his confession has been extorted by torture. Under our dual systems of judicial trial, with its numerous appeals, and of the trial of accused persons by their peers under the Frontier Crimes Regulation, it is almost impossible for an innocent man to be convicted in criminal cases, and I am glad to say that it is my belief that the practices of extorting confessions, suborning witnesses and of judging the police by the percentage of convictions to cases are not prevalent in this

* The portions of this letter omitted related to subjects other than the procedure in regard to confessions.

province. The measures you propose are, I presume, intended to be used as a remedy and not as a prophylactic, and I cannot too strongly urge in the interests of a simple and direct administration that the Government of India may consider the advisability of deferring their application in this province until there are some symptoms of disease. In no part of India do the police live so hard and so dangerous a life as in the North-West Frontier Province, and nowhere is it so necessary to support and protect them. As I have attempted to explain, circumstances deter them from the practice of oppression, and district and police officers are fully aware of the views of the Government of India and of my wishes regarding police procedure. All ranks of the police have worked honestly, on the whole the results are satisfactory, and I can only express the hope that the Government of India will allow a system, which is working well, to continue and will not tie my hands by the imposition of a number of rules which, while they are doubtless required in the more developed and civilized parts of India, are singularly inapplicable to the province in my charge.

Enclosure 12 in No. 1.

Extract from Lord Brampton's address to English police constables.

"Much discussion has on various occasions arisen touching the conduct of the police in listening to, and repeating statements of, accused persons. I will try, therefore, to point out what I think is the proper course for a constable to take with regard to such statements.

"When crime has been committed, and you are engaged in endeavouring to discover the author of it, there is no objection to your making inquiries of, or putting questions to, *any person*, from whom you think you can obtain useful information. It is your duty to discover the criminal if you can, and to do this you must make such inquiries, and if in the course of them you should chance to interrogate and to receive answers from a man who turns out to be the criminal himself, and who inculpates himself by these answers, they are nevertheless admissible in evidence, and may be used against him.

"When, however, a constable has a warrant to arrest, or *is about to arrest a person* on his own authority, or has a person in custody for a crime, it is wrong to question such a person touching the crime of which he is accused. Neither judge, magistrate or juryman can interrogate an accused person—unless he tenders himself as a witness, or require him to answer questions tending to criminate himself. Much less, then, ought a constable to do so, whose duty as regards that person is simply to arrest and detain him in safe custody. On arresting a man a constable ought simply to read his warrant, or tell the accused the nature of the charge upon which he is arrested, leaving it to the person so arrested to say anything or nothing as he pleases. For a constable to press any accused person to say anything with reference to the crime of which he is accused is very wrong. It is well also that it should be generally known that if a statement made by an accused person is made under or in consequence of any promise or threat, even though it amounts to an absolute confession, it cannot be used against the person making it. There is, however, no objection to a constable listening to any mere voluntary statement which a prisoner desires to make, and repeating such statement in evidence; nor is there any objection to his repeating in evidence any conversation he may have heard between the prisoner and any other person. But he ought not, by anything he says, or does, to invite or encourage an accused person to make any statement, without first cautioning him that he is not bound to say anything tending to criminate himself, and that anything he says may be used against him. Perhaps the best maxim for a constable to bear in mind with respect to an accused person is, 'keep your eyes and your ears open, and your mouth shut.' By silent watchfulness you will hear all you ought to hear. Never act unfairly to a prisoner by *coaxing* him by word or conduct to divulge anything. If you do, you will assuredly be severely handled at the trial, and it is not unlikely your evidence will be disbelieved"

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